

5-142A058

No.

Date ... MAY 22 1985

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RECORDATION NO. 14653 Filed 1425

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May 22, 1985

INTERSTATE COMMERCE COMMISSION

Dear Mr. Bayne:

File Second

On behalf of Security Pacific Leasing Corporation, Debtor, I submit for filing and recording, under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, four enclosed executed counterparts of a primary document, not previously recorded, entitled Indenture and Security Agreement, dated as of May 1, 1985.

The parties to the said enclosed document are:

Security Pacific Leasing Corporation - Debtor  
Four Embarcadero Center  
Suite 1200  
San Francisco, California 94111

Meridian Trust Company, as Indenture Trustee,  
Secured Party  
35 N. 6th Street  
Box 1102  
Reading, Pennsylvania 19601

The said document relates to, among other things, the issuance of certain Loan Certificates for financing one hundred fifty (150) covered hopper cars.

The rolling stock covered consists of one hundred fifty (150) covered hopper cars, identification numbers ECUX 847001 through 847150, both inclusive, and also identified by the same numbers as General Electric Railcar Services Corporation Serial Numbers.

A short summary of the document to appear in the Index is as follows:

"Covers 150 covered hopper cars ECUX 847001-847150, also identified by the same numbers as General Electric Railcar Services Corporation Serial Numbers."

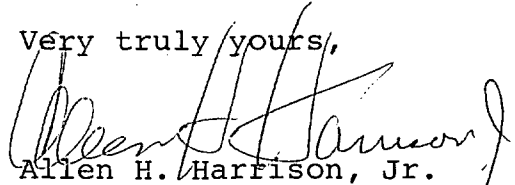
Enclosed is our firm check in the amount of ten dollars (\$10) in payment of the filing fee.

Needs Number

*Allen H. Harrison, Jr.*

Once this filing has been made, please return to bearer the stamped counterparts of the document not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,



Allen H. Harrison, Jr.  
Attorney for Security Pacific  
Leasing Corporation for the  
purpose of this filing

Honorable James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Enclosures

AHH/iw

BY HAND

File Second

14653

REGISTRATION NO. \_\_\_\_\_ Filed 1425

MAY 22 1985 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

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INDENTURE AND SECURITY AGREEMENT

Dated as of May 1, 1985

from

SECURITY PACIFIC LEASING CORPORATION

as Owner Participant

to

MERIDIAN TRUST COMPANY,

as Indenture Trustee

Leveraged Lease Financing of  
150 Covered Hopper Cars

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## INDENTURE AND SECURITY AGREEMENT

THIS INDENTURE AND SECURITY AGREEMENT dated as of May 1, 1985 ("Indenture"), from Security Pacific Leasing Corporation, a corporation organized and existing under the laws of the State of Delaware, as Owner Participant, to Meridian Trust Company, a Pennsylvania trust company, as Indenture Trustee (capitalized terms used herein being defined as provided in Section 1);

### W I T N E S S E T H

WHEREAS, the Owner Participant, the Lessee, General Electric Credit Corporation, as the Guarantor, the Indenture Trustee and Morgan Guaranty Trust Company of New York, as Trustee for a Commingled Pension Trust Fund, as the initial Loan Participant, contemporaneously with the execution and delivery hereof are entering into the Participation Agreement in order to provide, among other things, for the payment of Lessor's Cost of the Rail Cars; and

WHEREAS, the Owner Participant, the Lessee and the Guarantor contemporaneously with the execution and delivery hereof are entering into the Lease, providing for the leasing of the Rail Cars to the Lessee; and

WHEREAS, the Owner Participant desires by this Indenture, among other things, to provide for the issuance of and equal and ratable security for the Loan Certificates; and

WHEREAS, all acts and things have been done which are necessary to make the Loan Certificates, when executed by the Owner Participant and authenticated and delivered by the Indenture Trustee hereunder, the valid and binding obligations of the Owner Participant in accordance with their terms, and to constitute this Indenture a valid and binding instrument for the purposes herein expressed, in accordance with its terms; and

WHEREAS, the Indenture Trustee has full power and authority to execute this Indenture and to accept the trust imposed on and authorization granted it hereunder;

NOW, THEREFORE, THIS INDENTURE AND SECURITY AGREEMENT WITNESSETH, that in order equally and ratably to secure (A) the payment of the principal of, and interest on, the



Loan Certificates, and of all other indebtedness secured hereby and all other amounts payable or to be distributed by the Owner Participant, the Lessee or the Guarantor to or for the benefit of the holders of the Loan Certificates hereunder or under the Loan Certificates or the Participation Agreement, as the case may be, and as the same may be hereafter modified, amended, waived, supplemented or extended and (B) the performance and observance by the Owner Participant, the Lessee and the Guarantor for the benefit of the Indenture Trustee and the holders of the Loan Certificates of all the covenants and agreements contained herein, in the Loan Certificates or in the Participation Agreement, in each case for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained and of the purchase and acceptance of the Loan Certificates by the holders thereof, and of the acceptance by the Indenture Trustee of the trust herein created, and of the sum of One Dollar paid to the Owner Participant by the Indenture Trustee at or before the delivery hereof, the receipt and sufficiency of which is hereby acknowledged:

#### GRANTING CLAUSE

The Owner Participant has granted, delivered, bargained, sold, assigned, transferred, conveyed, granted a lien on and a security interest in, mortgaged, pledged and confirmed, and does hereby grant, deliver, bargain, sell, assign, transfer, convey, grant a lien on and security interest in, mortgage, pledge and confirm, unto the Indenture Trustee, in the trust hereby created for the equal and ratable security and benefit of the holders from time to time of the Loan Certificates, the following described property, whether now owned or hereafter acquired, to wit:

(1) all the estate, right, title and interest of the Owner Participant in and to the Rail Cars which the Owner Participant is to acquire on each Funding Date, all as will be more particularly described in the Certificate of Acceptance to be executed and delivered on each Funding Date with respect to the Rail Cars which the Owner Participant is to acquire on such Funding Date or as may be described in any subsequent indenture supplemental hereto as provided in this Indenture including, without limitation, all of Lessor's interest in additions, alterations or modifications thereto or replacements of any part thereof;

(2) all of the estate, right, title and interest of the Owner Participant in, to and under the Lease, the Purchase Agreement and the Bill of Sale, including, without limitation, all amounts of Rent, insurance proceeds and condemnation, requisition and other payments or awards payable to the Owner Participant of any kind for or with respect to the Rail Cars, and all rights of the Owner Participant thereunder to exercise any election or option or to make any decision or determination or to give any notice, consent, waiver or approval or to take any other action under or in respect thereof;

(3) all the estate, right, title and interest now held or hereafter acquired by the Owner Participant in and to all the tolls, rents, issues, profits, products, revenues and other income, and in and to all proceeds and payments, from or on account of the property, rights and privileges subjected or required to be subjected to the Lien of this Indenture;

(4) all the estate, right, title and interest now held or hereafter acquired by the Owner Participant in and to any right to restitution from the Lessee or the Guarantor in respect of any determination of invalidity of the Lease, the Participation Agreement, the Bill of Sale or the Purchase Agreement;

(5) all moneys and securities now or hereafter paid or deposited or required to be paid or deposited to or with the Indenture Trustee pursuant to any term of this Indenture, the Participation Agreement, the Lease or any other Basic Agreement and held or required to be held by the Indenture Trustee hereunder; and

(6) so long as an Event of Default under the Lease shall have occurred and be continuing, all estate, right, title and interest of the Owner Participant in, to and under any sublease of any of the Rail Cars, together with all renewals of such sublease executed from time to time, and all payments of rent, all insurance proceeds (other than public liability insurance proceeds) and all other amounts due or to become due thereunder;

(7) all other property of every kind and description, real, personal or mixed and all interests therein, now held or hereafter acquired by the Owner Participant pursuant to the provisions of the Lease or any other Basic Agreement, or otherwise, which is subjected to the lien of this Indenture, and the Indenture Trustee is hereby authorized to receive any such property and to hold and apply any and all such property subject to and in accordance with the terms of this Indenture as then supplemented.

BUT EXCLUDING, HOWEVER, from the property, rights and privileges subject to this Granting Clause all Excepted Payments, AND SUBJECT FURTHER, HOWEVER, to the provisions of Section 5.07.

TO HAVE AND TO HOLD all and singular the aforesaid properties, rights and interests, whether now owned or held or hereafter acquired (such properties, rights and interests being herein referred to as the "Indenture Estate"), unto the Indenture Trustee, its successors and assigns, in trust for the equal and ratable benefit and security of the holders from time to time of the Loan Certificates, without priority of any Loan Certificate over any other, except as herein otherwise expressly provided, and for the uses and purposes, and subject to the terms and provisions, set forth in this Indenture.

It is expressly agreed that anything herein to the contrary notwithstanding, the Owner Participant shall remain liable under the Lease to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof (provided that Owner Participant shall remain personally liable only with respect to Section 5.02(a) and Section 6.02(a) of the Participation Agreement), and the Indenture Trustee shall have no obligation or liability under the Lease by reason of or arising out of this assignment, nor shall the Indenture Trustee be required or obligated in any manner to perform or fulfill any obligations of the Owner Participant under or pursuant to the Lease or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Participant does hereby constitute the Indenture Trustee the true and lawful attorney of the Owner Participant, irrevocably, with full power (in the name of the Owner Participant or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies (in each case, excluding Excepted Payments) due and to become due under or arising out of the Lease and the Participation Agreement, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Indenture Trustee may deem to be necessary or advisable in the premises.

The Owner Participant agrees that at any time and from time to time, upon the written request of the Indenture Trustee, the Owner Participant will promptly and duly execute and deliver any and all such further instruments and documents as the Indenture Trustee may deem desirable in obtaining the full benefits of this Indenture and of the rights and powers herein granted.

The Owner Participant does hereby ratify and confirm the Lease and does hereby agree that it will not, except as provided in Section 4 hereof, take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the Lease or this Indenture or of any of the rights created or intended to be created by the Lease or this Indenture.

IT IS HEREBY FURTHER COVENANTED AND AGREED by and among the parties as follows:

## SECTION 1

### DEFINITIONS

#### 1.01 Certain Definitions.

(a) The following terms, as used herein, have the following meanings:

"Amortization Amount" due on any Principal Repayment Date shall mean the amount set forth opposite such date under the heading "Principal Recovery" on the principal repayment table attached as Appendix B to the Indenture.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York, Reading, Pennsylvania or San Francisco, California are authorized or required by law to close.

"Guarantor" means General Electric Credit Corporation, a New York corporation, and its successor and assigns.

"Highest Lawful Rate" means, in the case of any holder of a Loan Certificate, the maximum legal rate of interest which such holder is permitted to contract for, charge or receive under New York or federal law, whichever shall permit the highest such rate, and as to which the Owner Participant could not successfully assert a claim or defense of usury.

"Indenture Trustee" means Meridian Trust Company, a Pennsylvania trust company, in its capacity as Indenture Trustee under the Indenture, and its successors as Indenture Trustee thereunder.

"Indenture Trustee Office" means the principal corporate trust office of the Indenture Trustee at which at any particular time its corporate trust business shall be administered, which office is, at the date of execution of this Indenture, Meridian Trust Company, 35 N. 6th Street, Box 1102, Reading, Pennsylvania 19601.

"Interest Period" means with respect to each Loan Certificate the period commencing on (and including) the date of such Loan Certificate and ending on (and excluding) the first Semiannual Payment Date and each subsequent period commencing on (and including) a Semiannual Payment Date and ending on (and excluding) the next succeeding Semiannual Payment Date.

"Lending Office" means, as to the initial Loan Participant, its office located at its address set forth on Schedule I to the Participation Agreement, and, as to each other Loan Participant, such office as such Loan Participant may hereafter designate as its Lending Office by notice to the Indenture Trustee, the Owner Participant, the Lessee and the Guarantor.

"Loan" means the aggregate of the loans made by any Loan Participant pursuant to the Participation Agreement.

"Loan Certificate" shall mean each Loan Certificate, substantially in the form set forth in Section 2.01 hereof, issued by the Owner Participant pursuant to Section 2.02 hereof to a Loan Participant in the principal amount, bearing interest at the rate and payable as to principal and interest as provided in said Section 2.02 and secured as provided in the Granting Clauses hereof, and duly authenticated by the Indenture Trustee, and shall include any certificate issued in exchange therefore or replacement thereof pursuant to the provisions of this Indenture.

"Loan Participant" means Morgan Guaranty Trust Company of New York, as Trustee for a Commingled Pension Trust Fund, as the initial Loan Participant and its successors and assigns and any subsequent holder of any Loan Certificate.

"Participant" means and includes each Loan Participant and each Owner Participant.

"Past Due Rate" means the lesser of (a) the Highest Lawful Rate and (b) a rate per annum equal to 1% plus the interest rate at the time payable on the Loan Certificates then outstanding.

"Prepayment Date" means any date on or after August 1, 1990 on which date the Owner Participant shall advise the Indenture Trustee and the holders of the Loan Certificate that the Loan Certificates will be prepaid in full.

"Semiannual Payment Date" means February 1, and August 1 of each year, commencing August 1, 1985 through and including February 1, 2005 or, if any such date is not a Business Day, the next succeeding Business Day except as otherwise provided in Section 10.05 of the Indenture.

1.02 (a) Participation Agreement Definitions. Capitalized terms used but not defined herein shall have the respective meanings assigned thereto in Appendix A of the Participation Agreement for all purposes hereof (such definitions to be equally applicable to both the singular and plural forms of the terms defined) attached as Appendix A hereto.

(b) Lease Definitions. For all purposes of this Indenture, the following terms shall have the meanings assigned thereto in the Lease:

"Basic Rent"  
"Basic Term Commencement Date"  
"Event of Default"  
"Event of Loss"  
"Interim Rent"  
"Lessor Liens"  
"Permitted Liens"  
"Rent"  
"Rent Payment Date"  
"Stipulated Loss Value"  
"Supplemental Rent"  
"Term"  
"Termination Value"

## SECTION 2

### THE LOAN CERTIFICATES

SECTION 2.01. Form of Loan Certificate. The Loan Certificates shall be substantially in the form set forth below:

#### [FORM OF LOAN CERTIFICATE]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE SOLD OR OFFERED FOR SALE IN CONTRAVENTION OF SAID ACT.

THIS CERTIFICATE IS SUBJECT TO PREPAYMENT AS PROVIDED IN THE INDENTURE REFERRED TO BELOW.

SECURITY PACIFIC LEASING CORPORATION

LOAN CERTIFICATE DUE FEBRUARY 1, 2005

No. \_\_\_\_\_, 1985  
\$ \_\_\_\_\_

Security Pacific Leasing Corporation, as Owner Participant, hereby promises to pay to \_\_\_\_\_ or its registered assigns, together with interest on the amount of said unpaid principal amount from time to time outstanding from and including the date of this Loan Certificate until

payment in full of the principal amount of this Loan Certificate is made at the rate of 12.25% per annum (computed on the basis of a 360-day year of 12 30-day months) until due and payable on the dates provided for in the Indenture referred to below. Reference is made to the Indenture for provisions regarding the repayment hereof and the acceleration of the maturity hereof.

All payments of principal and interest to be made hereunder and under the Indenture and Security Agreement dated as of May 1, 1985 (herein called the "Indenture," the defined terms therein not otherwise defined herein being used herein with the same meaning) between the Owner Participant and Meridian Trust Company, as Indenture Trustee thereunder for the holder of this Loan Certificate (herein in such capacity called the "Indenture Trustee"), shall be made only from the income and proceeds of the Indenture Estate and only to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Section 3 of the Indenture; and each holder hereof, by its acceptance of this Loan Certificate, agrees that it will look solely to the income and proceeds of the Indenture Estate to the extent available for distribution to the holder hereof as provided in the Indenture and that neither the Owner Participant nor the Indenture Trustee, in its individual capacity, is liable to the holder hereof for any amounts payable under this Loan Certificate or the Indenture or, except as provided in the Indenture, for any liability under the Indenture.

Principal and interest shall be payable in immediately available funds at the times and places and in the manner specified in the Indenture.

Each holder hereof, by its acceptance of this Loan Certificate, agrees that each payment received by it hereunder prior to an Indenture Default and except as otherwise expressly provided in the Indenture shall be applied, first, to the payment of accrued interest on this Loan Certificate to the date of such payment, second, to the payment of the principal amount of this Loan Certificate then due and third, to the payment of the principal amount of this Loan Certificate remaining unpaid and to the several installments thereof in the reverse order of their maturity.

This Loan Certificate is one of the Loan Certificates referred to in the Indenture which have been or are to be issued by the Owner Participant pursuant to the terms of the Indenture. The Indenture Estate is held by the Inden-



ture Trustee as security for the Loan Certificates. Reference is hereby made to the Indenture for a statement of the rights of the holder of, and the nature and extent of the security for, this Loan Certificate, and conditions of the trusts created by the Indenture, to all of which terms and conditions in the Indenture each holder hereof agrees by its acceptance of the Loan Certificate.

This Loan Certificate is subject to optional and mandatory prepayment as provided in the Indenture.

Prior to the due presentation for registration of transfer of this Loan Certificate, the Owner Participant and the Indenture Trustee may deem and treat the registered holder of this Loan Certificate as the absolute owner and holder hereof for the purpose of receiving payment of all amounts payable with respect hereto and for all other purposes and shall not be affected by any notice to the contrary.

Until the certificate of authentication hereon shall have been duly executed by or on behalf of the Indenture Trustee by manual signature, this Loan Certificate shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Owner Participant has caused this Loan Certificate to be executed by one of its Authorized Officers as of the date hereof.

SECURITY PACIFIC LEASING  
CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

INDENTURE TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Loan Certificates referred to in the within-mentioned Indenture.

MERIDIAN TRUST COMPANY,  
not in its individual  
capacity but solely as  
Indenture Trustee

By: \_\_\_\_\_  
Title:

# LOAN CERTIFICATE

**SCHEDULE OF INDEBTEDNESS AND PAYMENTS OF PRINCIPAL**

[illegible]

2.02 Terms of the Loan Certificates. (a) There shall be issued, authenticated and delivered to each Loan Participant participating in the payment of Lessor's Cost for the Rail Cars financed on each Funding Date, as provided in the Participation Agreement, one or more Loan Certificates (having an aggregate principal amount equal to the amount of the loan made by such Loan Participants to the Owner Participant on such Funding Date, as determined under Section 3.01(a) of the Participation Agreement), each duly executed by the Owner Participant, duly authenticated by the Indenture Trustee and dated such Funding Date (or, in the event that any such Funding Date occurs after August 1, 1985) and registered in the name of such Loan Participant or such other name as such Loan Participant may specify to the Owner Participant at least two Business Days prior to such Funding Date. Receipt by the Indenture Trustee of the Loan Certificates duly executed by the Owner Participant shall constitute instruction to the Indenture Trustee to authenticate and deliver such Loan Certificates. Each Loan Certificate shall bear interest at the rate specified therein on the principal amount thereof from time to time outstanding from and including the date thereof until due and payable (computed on the basis of a 360 day year of 12 30-day months). The principal of and interest on each Loan Certificate shall be payable as set forth herein and therein.

(b) No Loan Certificate shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless it shall have been authenticated by or on behalf of the Indenture Trustee by manual signature.

(c) Each Loan Participant is authorized to endorse on the schedule attached to its Loan Certificates the amount of principal which the Owner Participant elects from time to time to have evidenced thereby and any prepayments and repayments thereof. Principal drawdowns, replacements of principal of one Loan with other Loans, principal repayments and interest payments shall be annotated by each Loan Participant on the Loan Certificates held by it within a reasonable time after each such drawdown, replacement, repayment or payment, it being understood (a) that if for any reason such annotations are not made or the making thereof is delayed beyond a reasonable time, such annotations shall be deemed to have been made and (b) that in no event and under no circumstances shall the actual aggregate unpaid principal amount actually due and payable under all Loan Certificates held by any Loan Participant ever exceed at any time (i) the aggregate amount lent by such Loan Participant on the Funding Dates less (ii) all principal repayments then or theretofore

made by the Owner Participant and collected by such Loan Participant. Prior to any transfer of any Loan Certificate each Loan Participant shall endorse thereon the amounts of loans evidenced by such Loan Certificates and the amount of principal paid thereon and the last date to which interest thereon has been paid.

2.03 Interest Payments. Each Loan shall bear interest on the aggregate outstanding principal amount thereof, for each day of the Interest Period applicable thereto, at the rate per annum specified in the Loan Certificate (computed on the basis of a 360-day year of 12 30-day months). Interest on each Loan shall be payable on the Basic Term Commencement Date and thereafter on each Semiannual Payment Date.

2.04 Mandatory Repayments of Loan Certificates and Application of Payments.

(a) Mandatory Repayments. (i) The Owner Participant shall repay and there shall become due and payable on the Loan Certificates (subject as to actual date of payment to Section 10.05 hereof), on each Semiannual Payment Date on or after February 1, 1986, an amount equal to the Amortization Amount; provided that in any event all unpaid indebtedness evidenced by the Loan Certificates shall be paid in full on February 1, 2005, together with all accrued but unpaid interest due thereon and all other amounts then due the holders thereof hereunder.

(ii) In addition to the mandatory repayments required under subsection 2.04(a)(i) above, there shall be mandatory repayments of principal on the Loan Certificates as follows: (A) when Termination Value is due and payable under Section 8 of the Lease, (B) when Stipulated Loss Value is due and payable under Section 8 of the Lease, (C) when the Lessee purchases the Rail Cars under Section 17 of the Lease, and (D) when required under Sections 3 and 4 of this Indenture.

(iii) Each required repayment under this Section 2.04 shall be applied to the Loan Certificates in the proportion that the outstanding unpaid principal balance of each Loan Certificate bears to the aggregate outstanding unpaid balance of all Loan Certificates.

(b) Application of Payments. In the case of each Loan Certificate, each payment of principal and interest thereon shall be applied, prior to an Indenture Default and except as otherwise expressly provided in this Indenture, first, to the payment of accrued but unpaid interest on such Loan Certificate to the date of such payment, second, to the payment of the principal amount of such Loan Certificate then due thereunder and third, the balance, if any, remaining thereafter, to the payment of the principal amount of such Loan Certificate remaining unpaid and to the several installments thereof in the reverse order of their maturity.

2.05 Optional Prepayment of Loan Certificates. Notwithstanding any other provision herein or in the Loan Certificates to the contrary, the Loan Certificates and the indebtedness evidenced thereby may be prepaid in full on a Prepayment Date (which shall be a Semiannual Payment Date) in accordance with the following terms and conditions:

(a) the Owner Participant shall give the Indenture Trustee and each Loan Participant not less than 30 days prior written notice of the Prepayment Date;

(b) on the Prepayment Date, the Owner Participant shall pay to the Indenture Trustee for the account of the Loan Participants the then aggregate outstanding unpaid principal balance of the Loan Certificates, together with accrued but unpaid interest on the Loan Certificates to and including the Prepayment Date, plus the full amount of additional compensation or other payments, if any, then expressly required and then due to the Loan Participant, or any of them, in respect of its Loan Certificates under any of the applicable provisions of this Indenture;

(c) if the Loan Certificates are to be prepaid in full as a result of the Lessee's exercise of its rights under Section 8.9 of the Lease, on the Prepayment Date, the Owner Participant shall pay to the Indenture Trustee for the account of the Loan Participant a prepayment fee equal to the percentage of the principal amount of the Loan Certificates then outstanding specified opposite such date under the heading "Percentage of Outstanding Amount Payable as Prepayment Fee" on the

Schedule attached as Appendix D to the Indenture;  
and

(d) all payments received by the Indenture Trustee pursuant to this Section 2.05 shall on the Prepayment Date, be paid over to the Loan Participant.

2.06 Overdue Amounts. If payment of any installment of interest and/or principal payable in accordance with the terms hereof and of the Loan Certificates, or the payment of any other amount due and payable by the Owner Participant under this Indenture or the other Basic Agreements, is not paid in full when due, whether as scheduled or upon acceleration and whether before or after the maturity date of the Loan Certificates, such overdue amount, including, to the extent permitted by law, overdue interest, shall bear interest, payable on demand, for each day from and including the date payment thereof was due to but excluding the date of actual payment, at the Past Due Rate; provided, however, that if payment is not made by the Owner Participant when due and payable as result of the occurrence of an event requiring foreclosure on the Rail Car, then such overdue amount, including, to the extent permitted by law, overdue interest shall bear interest, payable on demand at the rate then payable on the Loan Certificates.

2.07 Payments from Indenture Estate Only. Without impairing the rights, powers, privileges, liens or security interests of the holders of the Loan Certificates under this Indenture, each holder of a Loan Certificate, by its acceptance of a Loan Certificate, agrees that, except as expressly provided in Section 5.02(a) and 6.01(a) of the Participation Agreement, (i) the obligation to make all payments of principal and interest on the Loan Certificates, and the performance by the Owner Participant of every obligation or covenant contained in this Indenture, shall be payable only from the income and proceeds of the Indenture Estate and only to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Section 3; and (ii) neither the Owner Participant nor the Indenture Trustee, in its individual capacity, shall have any personal liability for any obligations or amounts payable hereunder or under the Loan Certificates. These provisions are not intended as any release or discharge of the indebtedness represented by the Loan Certificates and the Indenture, but are intended only as a covenant not to sue the Owner Participant or the Indenture Trustee in its individual capacity for a deficiency, the

indebtedness represented by this Indenture and the Loan Certificates to remain in full force and effect as fully as though these provisions were not contained in this Indenture. The Owner Participant hereby acknowledges that the holders of the Loan Certificates have expressly reserved all their legal rights and remedies against the Indenture Estate including, without limitation of the generality of the foregoing, the right, in the event of the default in the payment of principal or interest on any Loan Certificates, or upon the occurrence and continuation of any other Event of Default under this Indenture, to foreclose upon this Indenture and/or to receive the proceeds from the Indenture Estate and otherwise to enforce any other right under this Indenture.

2.08 Method of Payment. (a) Payments on Loan Certificates. The principal of and interest on each Loan Certificate shall be payable at the Indenture Trustee Office in lawful money of the United States of America, in immediately available funds, and shall be paid by the Indenture Trustee to the Loan Participants (on the same day basis if the funds to be so distributed have been received by the Indenture Trustee prior to 1:00 p.m. New York City time on such day or the next succeeding Business Day if the funds to be so distributed shall not have been received by the Indenture Trustee prior to 1:00 p.m. New York City time, in which case advice to each Loan Participant or holder of a Loan Certificate shall be given concurrently with such disbursement to the effect that disbursement is not timely made because the funds to be so disbursed were not received by the Indenture Trustee prior to 1:00 p.m. New York City time, on the day the funds were to be so distributed) by crediting the amount to be distributed to any holder of a Loan Certificate to any account maintained by such holder with the Indenture Trustee or, if such an account is not maintained, by whichever of the following methods shall be specified by notice from such holder to the Indenture Trustee: (i) by making such payment to such holder in immediately available funds at the Indenture Trustee Office, (ii) by transferring such amount in immediately available funds to a banking institution designated in such notice with bank wire transfer facilities for the account of such holder or (iii) by mailing a check for such amount to such holder at its address specified in or pursuant to the Participation Agreement (in the case of the holders that are parties to the Participation Agreement) or at such address as such holder shall designate by notice to the Indenture Trustee, in all cases without any presentment or surrender of any Loan Certificate, except that the holder of each Loan Certificate shall surrender such Loan Certificate for payment on the date of the final maturity



thereof. So long as any signatory to the Participation Agreement or nominee thereof shall be the registered holder of a Loan Certificate or the holder of record of a Loan Certificate, all payments to it shall be made in the manner provided in or pursuant to the Participation Agreement unless it shall have specified some other manner of payment by notice to the Indenture Trustee in accordance with the first sentence of this Subsection 2.08(a). The Indenture Trustee, in its individual capacity, agrees that if it shall fail to credit or transfer funds in accordance with this Section 2.08, it shall pay to each Loan Participant or holder of a Loan Certificate an amount equal to interest computed at a fluctuating rate per annum equal to 1% above the rate of interest announced publicly by Citibank, N.A., in New York, New York, from time to time as such bank's base rate, each change in such fluctuating rate to take effect simultaneously with the corresponding change in such rate (in each case, calculated on the basis of a 360-day year and actual days elapsed) on all funds not so credited or transferred from (and including) the date such funds should have been credited or transferred to (and excluding) the date such funds are so credited or transferred, such amount to be payable on demand.

(b) Registered Holder as Absolute Owner. The Owner Participant and the Indenture Trustee may deem and treat the person in whose name any Loan Certificate shall be registered as provided in Sections 2.02 and 2.10 as the absolute owner and holder of such Loan Certificate for the purpose of receiving payment of all amounts payable with respect to such Loan Certificate and for all other purposes, and the Owner Participant and the Indenture Trustee shall not be affected by any notice to the contrary.

2.09 Termination of Interest in Indenture Estate. A holder of a Loan Certificate shall have no further interest in, or other right with respect to, the Indenture Estate when and if the principal of and interest on all Loan Certificates held by such holder and all other sums payable to such holder hereunder, under the Basic Agreements and under such Loan Certificates shall have been paid in full.

2.10 Transfer of Loan Certificates; Replacement Loan Certificates. The Owner Participant shall maintain at the Indenture Trustee Office a register for the purpose of registering transfers and exchange of registered Loan Certificates. A holder of a Loan Certificate intending to transfer any or all of the Loan Certificates held by such holder to a new payee, or to exchange any or all of the Loan Certificates held by it for Loan Certificates of different

denominations, shall surrender such Loan Certificate or Loan Certificates to the Indenture Trustee at the Indenture Trustee Office, together with a written request from the holder for the issuance of one or more new Loan Certificates, specifying the denomination or denominations thereof (which must be \$100,000 or multiples thereof, plus one Loan Certificate in a smaller denomination, if requested) and, in the case of a surrender for registration of transfer, the name and address of the new payee or payees. Promptly upon receipt of such documents the Owner Participant shall issue a new Loan Certificate or Loan Certificates in the same form, in the same aggregate original principal amount and dated the same date or dates as the Loan Certificate(s) being surrendered, and in such denomination(s) and registered in the name of such payee(s) as shall be specified in the written request from such holder. Each Loan Certificate presented or surrendered for issue and registration of a new Loan Certificate or Loan Certificates shall be duly endorsed, or shall be accompanied by a written instrument of transfer duly executed, by the registered holder of such Loan Certificate or its attorney duly authorized in writing. All Loan Certificates issued upon any registration of transfer or exchange of Loan Certificates shall be the valid obligations of the Owner Participant evidencing the same respective obligations, and entitled to the same security and benefits under this Indenture, as the Loan Certificates surrendered upon such registration of transfer or exchange. The Indenture Trustee shall authenticate each new Loan Certificate on request by the Owner Participant and shall make a notation thereon of the aggregate amount of all payments or prepayments of principal previously made on the old Loan Certificate or Loan Certificates with respect to which such new Loan Certificate is issued and the date to which interest on such old Loan Certificate or Loan Certificates has been paid. The Indenture Trustee shall not be required to register the transfer of or exchange any surrendered Loan Certificate as above provided during the ten-day period preceding the due date of any payment on such Loan Certificate.

2.11 Mutilated, Defaced, Destroyed, Lost or Stolen Loan Certificates. If any Loan Certificate shall become mutilated, defaced, destroyed, lost or stolen, the Owner Participant shall, upon the written request of the registered holder of a Loan Certificate, execute and deliver in replacement thereof a new Loan Certificate in the same form, in the same original principal amount and dated the same date as the Loan Certificate so mutilated, defaced, destroyed, lost or stolen. If the Loan Certificate being replaced has become mutilated or defaced, such Loan Certificate shall be sur-

rendered to the Indenture Trustee and forwarded to the Owner Participant by the Indenture Trustee. If the Loan Certificate being replaced has been destroyed, lost or stolen, the holder of such Loan Certificate shall furnish to the Owner Participant and the Indenture Trustee such security or indemnity as may be required by them to save the Owner Participant and the Indenture Trustee harmless and evidence satisfactory to the Owner Participant and the Indenture Trustee of the destruction, loss or theft of such Loan Certificate and the ownership thereof, provided that, if the holder of such Loan Certificate is one of the signatories to the Participation Agreement, or an Affiliate thereof, the written undertaking of such holder delivered to the Owner Participant and the Indenture Trustee shall be sufficient security and indemnity. The Indenture Trustee shall authenticate each new Loan Certificate on request by the Owner Participant and shall make a notation thereon of the aggregate amount of all payments or prepayments of principal previously made on the old Loan Certificate with respect to which such new Loan Certificate is issued and the date to which interest on such old Loan Certificate has been paid.

2.12 Payment of Expenses on Transfer. Upon the issuance of a new Loan Certificate or Loan Certificates pursuant to Section 2.10 or 2.11, the Owner Participant or the Indenture Trustee may require from the party requesting such new Loan Certificate or Loan Certificates payment of a sum to reimburse the Owner Participant and the Indenture Trustee for, or to provide funds for, the payment of any tax or other governmental charge in connection therewith or any charges and expenses connected with such tax or other governmental charge paid or payable by the Owner Participant or the Indenture Trustee.

### SECTION 3

#### RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE INDENTURE ESTATE

3.01 Interim, Basic and Supplemental Rent Distribution; Application of Other Amounts upon Deficiency in Basic and Supplemental Rent.

(a) Interim, Basic and Supplemental Rent Distribution. Except as otherwise provided in Sections 3.01(c) and 3.03, each payment of Interim Rent or Basic Rent and any payment of Supplemental Rent constituting interest on any overdue installment of Rent received by the Indenture Trustee at any time shall, subject to timely receipt thereof, be

distributed by the Indenture Trustee on the Business Day such payment is due (or as soon thereafter as such payment shall be received by the Indenture Trustee) promptly on receipt by the Indenture Trustee, in the following order of priority:

First, so much of such payment as shall be required to pay in full the aggregate amount of the payment or payments of principal and interest (as well as any interest on overdue principal and, to the extent permitted by Applicable Laws, interest then due under all Loan Certificates then outstanding shall be distributed to the holders of such Loan Certificates ratably, without priority of one over the other or of one type over another, in the proportion that the amount of such payment or payments then due under each such Loan Certificate bears to the aggregate amount of the payments then due under all such Loan Certificates; and

Second, the balance, if any, of such payment remaining thereafter shall be distributed to the Owner Participant.

(b) Application of Other Amounts Held by Indenture Trustee upon Rent Default. Subject to Section 3.03, if, as a result of any failure by the Lessee to pay in full any installment of Interim Rent or Basic Rent when due (or within any applicable period of grace) or for any other reason, there shall not have been distributed pursuant to Section 3.01(a) on any date (or within any applicable period of grace) the full amount then distributable pursuant to clause "First" thereof, the Indenture Trustee shall, if so requested by a Majority in Interest of Certificate Holders, distribute any other payments of the character referred to in Section 3.05 hereof (other than Excepted Payments and payments due the Indenture Trustee hereunder or under the Participation Agreement) then held by it or thereafter received by it to the holders of all Loan Certificates to the extent necessary to enable it to make all the distributions then due pursuant to such clause "First".

(c) Retention of Amounts by Indenture Trustee. Subject to Section 3.03 hereof, if at the time of receipt by the Indenture Trustee of an installment of Interim Rent or Basic Rent (whether or not then overdue) or of any Supplemental Rent constituting payment of interest on any overdue installment of Rent, there shall have occurred and be continuing (i) a failure to pay Rent (other than Supplemental Rent consisting only of an Excepted Payment) when it shall

become due, (ii) a Lease Default with respect to which notice shall have been given, (iii) a Lease Default as provided in subsections (4), (5) or (8) of Section 14 of the Lease or (iv) an Indenture Default (other than under Section 4.01(b) hereof) and, in the case of Section 4.01(c) hereof, with respect to which notice shall have been given, the Indenture Trustee shall retain such payment of Interim Rent or Basic Rent or of interest (to the extent not then required to be distributed pursuant to clause "First" of Section 3.01(a) hereof) in the same manner as set forth in Section 3.05 hereof, and shall not distribute any such payment of Interim Rent or Basic Rent or interest until the earlier of (A) such time as there shall not be continuing any condition or circumstances set forth in clause (i), (ii), (iii) or (iv) of this Section 3.01(c), in which case such payment shall be distributed pursuant to clause "Second" of Section 3.01(a) hereof and (B) such time as the Loan Certificates shall have been declared due and payable pursuant to Section 4.02, in which case such payment shall be distributed pursuant to Section 3.03 hereof and (C) the first Business Day occurring more than 180 days after receipt of such payment in which case such payment shall be distributed as provided in clause "First" of Section 3.02(a), and thereafter as provided in clause "First" of Section 3.01(a), and thereafter as provided in clauses "Third" and "Fourth" of Section 3.02(a).

(d) Application of Payments. The portion of each payment referred to in this Section 3.01 which is distributed to a holder of a Loan Certificate on account of principal or interest on such Loan Certificate shall be applied by such holder in payment of such Loan Certificate in accordance with the terms of Section 2.04(b) hereof.

### 3.02 Payment for Events of Loss or Following Lease Termination.

(a) Payments Under Sections 8 and 17.3 of the Lease. Except as otherwise provided in Section 3.03 hereof, any amounts (other than Excepted Payments) received by the Indenture Trustee from the Lessee or any Governmental Authority, insurer or other Person as a result of (i) the sale of the Rail Cars as obsolete or uneconomic pursuant to Section 8.7 of the Lease or any payment of Stipulated Loss Value pursuant to Section 8.7 or any payment of Termination Value pursuant to such Section 8.8 (ii) the purchase of the Rail Cars pursuant to Section 17.3 of the Lease or (iii) any payment of Stipulated Loss Value pursuant to Section 8 of the Lease or other payment received by the Indenture Trustee as a result of the occurrence of an Event of Loss with respect to

the Rail Cars shall in each case be distributed forthwith upon receipt by the Indenture Trustee in the following order of priority:

First, so much of such payment as shall be required to reimburse the Indenture Trustee and each existing or prior holder of a Loan Certificate (A) for any expenses (including reasonable fees and disbursements of counsel) not reimbursed by the Lessee which were incurred in connection with the collection or distribution of such payment, (B) for any unpaid fees for the Indenture Trustee's services under this Indenture and any tax, expense or cost (including reasonable fees and disbursements of counsel) incurred by the Indenture Trustee (to the extent incurred in connection with its duties as Indenture Trustee and to the extent reimbursable and not previously reimbursed) shall be distributed to the Indenture Trustee for distribution to itself and such holders;

Second, so much of such payment as shall be required to pay in full the principal amount of the indebtedness evidenced by the Loan Certificates plus accrued but unpaid interest (including interest on overdue principal and, to the extent permitted by Applicable Law, interest) thereon (or if not sufficient to pay principal and interest in full, then to accrued, but unpaid interest, first, and then to unpaid principal, second) shall be distributed to the holders of the Loan Certificates ratably, without priority of one over the other, in the proportion that the aggregate principal and accrued but unpaid interest payable to each such holder of Loan Certificates bears to the aggregate principal and accrued but unpaid interest payable to all holders of Loan Certificates;

Third, in the manner provided in clause "Second" of Section 3.03 hereof to the extent not previously paid; and

Fourth, the balance, if any, of such payment remaining thereafter shall be distributed to the Owner Participant.

(b) Certain Payments Under Section 8 of the Lease. Except as otherwise provided in Section 3.03 hereof, any payment (other than Excepted Payments) received directly or

through the Lessee from any Governmental Authority, insurer or other Person pursuant to Section 8 of the Lease with respect to any condemnation, confiscation or seizure of, or requisition of title to or use of, or theft of, or loss of use of, or damage to, any part of the Rail Cars constituting an Event of Loss, to the extent that such payment is not at the time required to be paid to the Lessee pursuant to said Section 8, shall, except as otherwise provided below in this Section 3.02(b), be distributed forthwith upon receipt by the Indenture Trustee in the order of priority set forth in Section 3.02(a). Any portion of any payment referred to in the preceding sentence that is not required to be paid to the Lessee solely because a Lease Default shall have occurred, shall be held by the Indenture Trustee as security for the obligations of the Lessee under the Lease and the Participation Agreement and at such time as there shall not be continuing any such Lease Default, such portion shall be paid to the Lessee, unless the Indenture Trustee (as assignee from the Owner Participant of the Lease) shall have theretofore declared the Lease to be in default pursuant to Section 14 thereof, in which event such portion shall be distributed forthwith upon such declaration in accordance with the provisions of Section 3.03 hereof.

(c) Application of Payments. The portion of each payment referred to in Section 3.02(a) or 3.02(b) hereof which is distributed to a holder of Loan Certificate on account of principal or interest on such Loan Certificate shall be applied by such holder in payment of such Loan Certificate in accordance with the terms of Section 2.04(b) hereof.

3.03 Payments After Indenture Event of Default. All payments received and all amounts held or realized by the Indenture Trustee after an Event of Default hereunder shall have occurred and be continuing (including any amounts realized by the Indenture Trustee from the exercise of any remedies pursuant to Section 14 of the Lease) (other than Excepted Payments), and after the Indenture Trustee (as assignee from the Owner Participant of the Lease) shall have declared the Lease to be in default pursuant to Section 14 thereof or after the outstanding principal amount of the Loan Certificates shall have been declared to be due and payable pursuant to Section 4.02 hereof, and all payments or amounts then held or thereafter received by the Indenture Trustee hereunder or under the Participation Agreement (other than Excepted Payments), shall, so long as such declaration shall not have been rescinded, be distributed forthwith by the Trustee in the following order of priority:

First, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee (A) for any expenses (including reasonable fees and disbursements of counsel) not previously reimbursed by the Lessee which were incurred in connection with the collection or distribution of such payment and (B) for any unpaid fees for its services under this Indenture and any tax, expense or cost (including reasonable fees and disbursements of counsel) incurred by it (to the extent incurred in connection with its duties as Indenture Trustee and to the extent reimbursable and not previously reimbursed) -- shall be distributed to the Indenture Trustee for application to itself;

Second, so much of such payments or amounts remaining as shall be required to pay each existing or prior holder of a Loan Certificate the amounts payable to such Person pursuant to the provisions of Section 7, 8 or 11 of the Participation Agreement, or pursuant to any indemnification provisions of any of the Basic Agreements, or as may be necessary to reimburse such Person for any expenses (including reasonable fees and disbursements of counsel) incurred and not previously reimbursed by the Lessee in connection with the collection or distribution of such payment--shall be distributed to the Persons entitled thereto ratably, without priority of one such Person over the other, in the proportion that the amount of such indemnity or other payments to which each such Person is entitled bears to the aggregate amount of all such indemnities or other payments;

Third, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all Loan Certificates then outstanding, and accrued but unpaid interest thereon to the date of distribution (including interest on overdue principal and, to the extent permitted by Applicable Law, overdue interest) -- shall be distributed to the holders of such Loan Certificates ratably, without priority of one over the other or of one type over another, in the proportion that the aggregate unpaid principal amount of all such Loan Certificates held by each such holder and accrued but unpaid interest thereon bears to the aggregate unpaid principal amount of



all Loan Certificates held by all such holders and accrued but unpaid interest thereon; and

Fourth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to the Owner Participant.

3.04 Investment of Certain Payments Held by the Indenture Trustee. Any amounts held by the Indenture Trustee hereunder shall be invested by the Indenture Trustee from time to time as directed in writing by the Owner Participant, and at the expense and risk of the Owner Participant, in outright ownership (not subject to repurchase agreements) of (A) obligations of, or guaranteed as to interest and principal by, the United States Government maturing not more than 90 days after such investment, (B) open market commercial paper of any corporation incorporated under the laws of the United States of America or any state thereof and not an Affiliate of the Lessee or the Owner Participant rated "prime-1" or its equivalent by Moody's Investors Service Inc. or "A-1" or its equivalent by Standard & Poor's Corporation or (C) overnight funds of creditworthy commercial banks organized under the laws of the United States of America or of any political subdivision thereof and having a combined capital and surplus in excess of \$250,000,000; provided, however, that the aggregate amount at any one time so invested (a) in open market commercial paper of any corporation shall not exceed \$2,000,000 and (b) in certificates of deposit issued by any one bank shall not exceed \$10,000,000. Any income or gain realized as a result of any such investment shall be applied to make up any losses resulting from any such investment to the extent such losses shall not have been recovered from the Owner Participant, pursuant to this Section 3.04. Any other income or gain so realized shall be promptly distributed to the Owner Participant. Upon incurring any losses from any such investment, which losses are not made up from income or gain as aforesaid, the Indenture Trustee shall promptly notify the Owner Participant thereof and, upon receipt of such notice, the Owner Participant shall promptly pay to the Indenture Trustee the amount of such loss, which amount shall be credited to the appropriate account. The Indenture Trustee shall have no liability for any loss resulting from any such investment other than by reason of the willful misconduct or gross negligence of the Indenture Trustee. Any such investment may be sold (without regard to maturity date) by the Indenture Trustee whenever necessary to make any distribution required by this Section 3.

3.05 Distributions Under Lease or Participation Agreement. Except as otherwise provided in Section 3.03 and 3.07 hereof, any payment received by the Indenture Trustee for the application of which provision is made in the Lease, in the Participation Agreement or in any other Basic Agreement but not elsewhere in this Indenture shall, unless an Indenture Default of the type described in clause (i), (ii), (iii) or (iv) of Section 3.01(c) hereof shall have occurred and be continuing, be applied forthwith to the purpose for which such payment was made in accordance with the terms of the Lease, the Participation Agreement or the other Basic Agreement, as the case may be. If at the time of the receipt by the Indenture Trustee of any payment referred to in the preceding sentence there shall have occurred and be continuing such an Indenture Default, the Indenture Trustee shall hold such payment (other than an Excepted Payment) as part of the Indenture Estate; provided, that unless otherwise applied in accordance with the provisions of Section 3.01 or 3.03 hereof, the Indenture Trustee shall cease so to hold such payment and shall apply such payment to the purpose for which it was made in accordance with the terms of the Lease, the Participation Agreement or the other Basic Agreements, as the case may be, if and whenever there shall no longer be continuing such an Indenture Default as had occurred and was continuing at the time of the receipt by the Indenture Trustee of such payment on the first Business Day occurring more than 180 days after receipt of such payment, whichever shall first occur.

3.06 Other Payments. Except as otherwise provided in Sections 3.03 and 3.05:

(a) any payments received by the Indenture Trustee for the application of which no provision is made in the Participation Agreement, the Lease, any other Basic Agreement or elsewhere in this Section 3 shall be held by the Indenture Trustee as part of the Indenture Estate and, on the first Semiannual Payment Date occurring more than 180 days after such payment was received shall be applied as provided in clause "First" of Section 3.02(a), and thereafter as provided in clause "First" of Section 3.01(a), and thereafter as provided in clauses "Third" and "Fourth" of Section 3.02(a); and

(b) all payments received and amounts realized by the Indenture Trustee under the Lease or otherwise with respect to the Rail Cars (including,

without limitation, all amounts realized upon the sale or release of the Rail Cars after the termination of the Lease) to the extent received or realized at any time after payment in full of the principal of and interest on all Loan Certificates, as well as any other amounts remaining as part of the Indenture Estate after payment in full of the principal of and interest on all Loan Certificates and all other amounts due the holders of Loan Certificates hereunder, under the Participation Agreement or under the other Basic Agreements shall be distributed forthwith by the Indenture Trustee in the order of priority set forth in Section 3.03 hereof, omitting clause "Third" thereof.

3.07 Excepted Payments. Notwithstanding any other provision of this Section 3, all Excepted Payments, if received by the Indenture Trustee at any time, shall be promptly paid by the Indenture Trustee to the Owner Participant.

3.08 Distributions to the Owner Participant. Unless otherwise directed in writing by the Owner Participant, all amounts from time to time distributable by the Indenture Trustee to the Owner Participant in accordance with the provisions hereof shall be paid by the Indenture Trustee to the Owner Participant in funds of the type received by the Indenture Trustee by wire transfer following receipt.

3.09 Interest Reports. Within seven Business Days after the end of each calendar year, commencing with the calendar year 1985, and after the date that all outstanding Loan Certificates shall have been paid in full, the Indenture Trustee shall furnish the Lessee and the Owner Participant with a report stating the total amount of interest that was paid on the Loan Certificates during the calendar year immediately preceding the receipt of such report (excluding the final such report) and during the period from the end of the prior calendar year to the date on which all outstanding Loan Certificates are paid in full in the case of the final such report.

## SECTION 4

### DEFAULTS; REMEDIES OF THE INDENTURE TRUSTEE

#### 4.01 Occurrence of Indenture Event of Default.

Each of the following events shall constitute an "Event of Default" hereunder (whether any such event shall be voluntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) (i) any payment of principal or interest on any Loan Certificate (including payments constituting Stipulated Loss Value or Termination Value) shall not be paid within five Business Days after the same shall have become due, (ii) any payment due to a Loan Participant which constitutes Supplemental Rent under the Lease (other than payments of Stipulated Loss Value or Termination Value) shall not be paid within 20 days after the same shall become due, or (iii) any other payment due to a Loan Participant hereunder, under the Participation Agreement or any other of the Basic Agreements shall not be made within 5 days after any written notice from the Indenture Trustee or any holder of a Loan Certificate to the Owner Participant (with a copy to the Lessee, the Guarantor and, if given by a Loan Participant, the Indenture Trustee) that the same has not been paid when due;

(b) any Event of Default shall occur and be continuing under the Lease; provided, however, that no Event of Default shall exist hereunder by reason of an Event of Default under the Lease if such Event of Default under the Lease arose as a result of the failure of the Lessee or the Guarantor to make any Excepted Payment or to render any performance to the Owner Participant with respect to any Excepted Payments (including any breach by the Lessee or the Guarantor under the Tax Indemnification Agreement), unless and until the Owner Participant shall instruct the Lessee or the Guarantor and the Indenture Trustee in writing that an Event of Default exists hereunder;

(c) the Owner Participant shall fail to perform or observe any of its other covenants in this Indenture or any of its covenants in the Participation Agreement or any other of the Basic Agreements and such failure shall continue unremedied for a period of 30 days after written notice thereof by the Indenture Trustee or any holder of a Loan Certificate to the Owner Participant (with a copy to the Lessee, the Guarantor and, if notice is given by a Loan Participant, the Indenture Trustee);

(d) any representation or warranty made by the Owner Participant in any of the Basic Agreements to which it is a party, or in any statement, report, schedule, notice or other writing furnished by the Owner Participant to the Indenture Trustee or any holder of a Loan Certificate in connection therewith, shall prove to have been incorrect in any material respect at the time made and the Owner Participant shall not or cannot cause such representation or warranty to become correct within 30 days after the date notice thereof is provided to the Owner Participant by the Indenture Trustee or any holder of a Loan Certificate (with a copy to the Lessee and, if notice is given by a Loan Participant, the Indenture Trustee).

4.02 Action Upon Indenture Event of Default. (a) Declaration of Acceleration. Subject to the expiration of the rights of the Owner Participant under Section 4.03, at any time after an Event of Default under this Indenture shall have occurred and be continuing, the holder or holders of at least 25% in outstanding principal amount of unpaid Loan Certificates may declare the principal of all the Loan Certificates to be due and payable immediately by giving written notice to the Owner Participant, the Indenture Trustee and each holder (not constituting such 25% or more) of a Loan Certificate, whereupon the unpaid principal amount of all Loan Certificates then outstanding and accrued but unpaid interest thereon shall immediately become due and payable without further notice of any kind. In the event the Indenture Trustee shall at any time declare the Lease in default pursuant to Section 14 thereof, the unpaid principal amount of the Loan Certificates, together with accrued interest thereon, shall immediately become due and payable without further act or notice of any kind.

(b) Exercise of Other Remedies. The Indenture Trustee, as assignee, lienor and secured party hereunder or otherwise, acting pursuant to Section 5 of this Indenture, may (i) exercise all remedies available to it as assignee, lienor and secured party hereunder with respect to all properties subject to the Lien of this Indenture under Sections 4.04 through 4.12 or available to a secured party under the Uniform Commercial Code as adopted in the State of New York or other applicable jurisdiction or otherwise available under Applicable Law and (ii) in addition, if an Event of Default under the Lease shall have occurred and be continuing, declare the Lease in default pursuant to such Section 14 thereof, exercise any or all of the remedies pursuant to such Section 14 of the Lease and may take possession of all or any part of the Indenture Estate and exclude the Owner Participant (and, if the Lease has been declared in default, the Lessee and all Persons claiming through it) wholly or partly therefrom. The Indenture Trustee shall give the Owner Participant not less than fifteen Business Days' prior written notice of the date on which the Indenture Trustee will first exercise any remedy hereunder or pursuant to the Lease.

(c) Rescission of Acceleration. If at any time after the outstanding principal amount of the Loan Certificates shall have become due and payable by acceleration pursuant to this Section 4.02, and no judgment or decree for any amount so becoming due and payable shall have been entered, then if (i) the Owner Participant shall have paid all amounts of principal and interest which shall have become due and payable in respect to all the Loan Certificates otherwise than pursuant to this Section 4.02, together with interest on all such overdue principal and, to the extent permitted by Applicable Laws, interest at the applicable rate specified in or pursuant to Section 2 of this Indenture and an amount sufficient to cover all costs and expenses of collection incurred by or on behalf of each holder of the Loan Certificates (including, without limitation, reasonable counsel fees and expenses and all expenses and reasonable compensation of the Indenture Trustee), and (ii) every other Event of Default under this Indenture shall have been remedied or waived, then a Majority in Interest of Certificate Holders may, by written notice or notices to the Owner Participant, the Indenture Trustee and the Lessee, rescind and annul such acceleration and any related declaration of default under the Lease, and their respective consequences, but no such rescission and annulment shall extend to, affect or waive any subsequent Indenture Default or Lease Default or impair any right consequent thereon.

4.03 Right to Cure Events of Default; Purchase of Loan Certificates. (a) Any Event of Default under Section 14.01(1) or Section 14.01(2) of the Lease and any corresponding Indenture Event of Default under Section 4.01(a) hereof shall (but only for purposes of this Indenture) be deemed waived, cured and no longer continuing and all consequences thereof shall be deemed waived, rescinded and annulled (without releasing the Lessee from any obligation in respect thereof) if the Owner Participant shall pay all principal and interest then due and owing (other than by reason of acceleration) on the Loan Certificates; provided that the time period during which the Owner Participant may perform the obligation of the Lessee the breach of which gave rise to an Event of Default, and therefore be deemed to have cured such an Event of Default, shall end at the close of business on the fifteenth Business Day after receipt by the Owner Participant of notice of such Event of Default.

(b) Any Event of Default other than an Event of Default under Section 14.01(1) or Section 14.01(2) of the Lease and any corresponding Indenture Event of Default under Section 4.01(a) hereof shall (but only for purposes of this Indenture) be deemed waived, cured and no longer continuing and all consequences thereof shall be deemed waived, rescinded and annulled (without releasing the Lessee from any obligation in respect thereof) if the Owner Participant shall have performed the obligation of the Lessee breach of which gave rise to such Event of Default; provided that the time period during which the Owner Participant may perform the obligation of the Lessee breach of which gave rise to the Event of Default, and therefore be deemed to have cured such an Event of Default, shall end at the close of business on the 15th Business Day after receipt by the Owner Participant of notice of such Event of Default.

(c) In the event of the occurrence of an Event of Default under the Lease or an Indenture Event of Default, the Owner Participant may, but shall not be obligated to, purchase all but not less than all outstanding Loan Certificates by depositing into the Indenture Estate in immediately available funds in an amount equal to the aggregate unpaid principal amount on all outstanding Loan Certificates as of the date of purchase plus any accrued but unpaid interest on such Loan Certificates to the date of purchase. Upon the deposit of such monies into the Indenture Estate, the interests of all holders of Loan Certificates in the Indenture Estate shall terminate, and each holder of a Loan Certificate shall have no further interest in, or other rights with respect to, the Indenture Estate except the right to receive

the unpaid principal amount on such holder's Loan Certificate plus accrued but unpaid interest to the date of purchase. The purchase of the Loan Certificates pursuant to this paragraph (c) shall be deemed to be payment in full of the principal of, and interest on, all Loan Certificates then outstanding for purposes of Section 10.01 hereof. The time period during which the Owner Participant may purchase the Loan Certificates pursuant to this subsection shall end at the close of business on the fifteenth Business Day after receipt by the Owner Participant of notice with respect to the Event of Default giving rise to the right to purchase the Loan Certificates.

(d) Upon curing any Event of Default pursuant to this Section 4.03, or upon the purchase of the Loan Certificates pursuant to paragraph (c) of this Section 4.03, the Owner Participant shall be subrogated to all rights of the Indenture Trustee in respect of the payment, agreement or covenant giving rise to such Event of Default, any right to any interest in respect thereof, and shall be entitled to any payment or other performance in respect thereof upon receipt by the Indenture Trustee.

4.04 Remedies. The Owner Participant agrees to the full extent that it lawfully may do so, that if one or more Events of Default under the Indenture shall have occurred and be continuing and if the maturity of the unpaid principal amount of the Loan Certificates shall have been accelerated pursuant to Section 4.02, then, and in every such event (but subject to the rights of the Lessee under Section 4.13), the Indenture Trustee, as assignee, lienor and secured party hereunder, or otherwise, may exercise any or all of the rights and powers and pursue any and all of the remedies available to it hereunder or (if an Event of Default under the Lease shall have occurred and be continuing and if the Lease shall have been declared in default) under the Lease or available to a secured party under the Uniform Commercial Code as adopted in the State of California or other applicable jurisdiction or as otherwise provided under Applicable Laws.

4.05 Return of Indenture Estate, etc. (a) In exercising its remedies hereunder pursuant to Section 4.04, the Indenture Trustee may request the Owner Participant to, and upon such request the Owner Participant shall, promptly execute and deliver to the Indenture Trustee such instruments of title and other documents as the Indenture Trustee may deem necessary or advisable to enable the Indenture Trustee or any agent or representative designated by the Indenture



Trustee, at such time or times and place or places as the Indenture Trustee may specify, to obtain possession of all or any part of the Indenture Estate to the possession of which the Indenture Trustee shall at the time be entitled hereunder. If the Owner Participant shall for any reason fail to execute and deliver any such instruments or documents after such demand by the Indenture Trustee, the Indenture Trustee may (i) obtain a judgment conferring on the Indenture Trustee the right to immediate possession and requiring the Owner Participant to deliver such instruments and documents to the Indenture Trustee, to the entry to which judgment the Owner Participant hereby specifically consents, and (ii) pursue all or any part of the Indenture Estate wherever it may be found and enter any of the premises of the Owner Participant or the Lessee wherever the Indenture Estate may be or be supposed to be and search for the Indenture Estate and take possession of and remove the Indenture Estate.

(b) Upon every such taking of possession, the Indenture Trustee may, from time to time, at the expense of the Indenture Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Indenture Estate as it may deem proper. In each such case, the Indenture Trustee shall have the right to use, operate, store, control and manage the Indenture Estate and to carry on the business and to exercise all rights and powers of the Owner Participant relating to the Indenture Estate, as the Indenture Trustee shall deem best, including the right to enter into any and all such agreements with respect to the maintenance, operation, leasing, storage or disposition of the Indenture Estate or any part thereof as the Indenture Trustee may determine; and the Indenture Trustee shall be entitled to collect and receive all rents, revenues, issues, income, products and profits of the Indenture Estate, except Excepted Payments, and every part thereof, without prejudice, however, to the right of the Indenture Trustee under any provision of this Indenture to collect and receive all cash held by, or required to be deposited with, the Indenture Trustee hereunder. Such rents, revenues, issues, income, products and profits (other than Excepted Payments) shall be applied to pay the expenses of holding and operating the Indenture Estate and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Indenture Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Indenture Estate or any part thereof (including the employment of engineers and accountants to examine, inspect

and make reports upon the Indenture Estate and the books and records of the Owner Participant relating thereto), and all other payments that the Indenture Trustee may be required or authorized to make under any provision of this Indenture, as well as just and reasonable compensation for the services of the Indenture Trustee, and of all Persons properly engaged and employed by the Indenture Trustee.

(c) The Owner Participant hereby ratifies and confirms any and all acts that the Indenture Trustee, or such Indenture Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. The Owner Participant hereby agrees that the recitals contained in any deed, bill of sale, assignment or other instrument executed in due form by the Indenture Trustee or substitute trustee, acting under the provisions of this instrument, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed, bill of sale, assignment or other instrument and the passing of title thereby, and all prerequisites and requirements of any sale or sales shall be conclusively presumed to have been performed, and all Persons subsequently dealing with the Indenture Estate purported to be conveyed by such deed, bill of sale, assignment or other instrument, including, without limitation, the purchaser or purchasers thereof, shall be fully protected in relying upon the truthfulness of such recitals.

(d) The Indenture Trustee may also at any time, at its election, or pursuant to instruments, proceed at law or in equity or otherwise to foreclose the Lien of this Indenture against all or any part of the Indenture Estate to which the Indenture Trustee has been granted a power of sale, and to have the same sold under the judgment or decree of a court of competent jurisdiction or as otherwise may be required or permitted by Applicable Laws.

4.06 Indenture Trustee Authorized to Execute Bills of Sale, etc. The Owner Participant irrevocably appoints (which appointment is coupled with an interest) the Indenture Trustee the true and lawful attorney-in-fact of the Owner Participant in its name and stead and on its behalf, for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement of the Lien of this Indenture under Section 4.05(c) hereof, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such deeds, bills of sale, assignments and other instruments

as the Indenture Trustee may consider necessary or appropriate, with full power of substitution, the Owner Participant hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Indenture Trustee or any purchaser, the Owner Participant shall ratify and confirm any such sale, assignment, transfer or delivery, by executing and delivering to the Indenture Trustee or such purchaser all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

4.07 Purchase of Indenture Estate by Indenture Trustee or Holder of Loan Certificates. To the extent permitted by Applicable Laws, the Indenture Trustee or any holder of a Loan Certificate may be a purchaser of the Indenture Estate or any part thereof or any interest therein at any sale thereof, whether pursuant to foreclosure, power of sale or otherwise. Any holder of a Loan Certificate may apply against the purchase price therefor the amount then due under any Loan Certificates of such holder which shall, upon distribution of the net proceeds of such sale, be payable thereon. The Indenture Trustee or any holder of a Loan Certificate or any nominee thereof shall, upon any such purchase, acquire good title to the property so purchased, free of the lien of this Indenture and, to the extent permitted by Applicable Laws, free of all rights of redemption in the Owner Participant.

4.08 Receipt a Sufficient Discharge. Upon any sale of the Indenture Estate or any part thereof or interest therein, whether pursuant to foreclosure or power of sale or otherwise, the receipt of the officer making the sale under judicial proceedings or of the Indenture Trustee shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

4.09 Appointment of Receiver. If the outstanding principal amount of the Loan Certificates shall have become due and payable pursuant to Section 4.02(a), the Indenture Trustee shall, as a matter of right, be entitled to the appointment of a receiver (who may be the Indenture Trustee or any successor or nominee thereof) for all or any part of the Indenture Estate, whether such receivership be incidental to a proposed sale of the Indenture Estate or the taking of possession thereof, or otherwise, and the Owner Participant, to the extent it may lawfully do so, hereby consents to the appointment of such a receiver and will not oppose any such

appointment. Any receiver appointed for all or any part of the Indenture Estate shall be entitled to exercise all the rights and powers which the Indenture Trustee could exercise with respect to the Indenture Estate.

4.10 Waiver of Various Rights by the Owner Participant. The Owner Participant hereby waives and agrees, to the extent permitted by Applicable Laws, that it shall never seek or derive any benefit or advantage from any of the following, whether now existing or hereafter in effect, in connection with any proceeding under or in respect of this Indenture:

- (a) any stay, extension, moratorium or other similar law;
- (b) any law providing for the valuation of or appraisal of any portion of the Indenture Estate in connection with a sale thereof; or
- (c) any right to have any portion of the collateral or other security for the Loan Certificates marshalled.

The Owner Participant covenants not to hinder, delay or impede the exercise of any right or remedy under or in respect of this Indenture, and agrees, to the extent permitted by Applicable Laws, to suffer and permit its exercise as though no laws or rights of the character listed above were in effect.

4.11 Remedies Cumulative. Each and every right, power and remedy herein specifically given to the Indenture Trustee or the holders of the Loan Certificates in this Indenture or under the other Basic Agreements shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be deemed expedient by the Indenture Trustee or the holders of the Loan Certificates and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Indenture Trustee or the holders of the Loan Certificates in the exercise of any right or power or in the pursuit of any remedy shall impair any such right, power or remedy or be construed

to be a waiver of any default on the part of the Owner Participant or the Lessee or to be an acquiescence therein.

4.12 Discontinuance of Proceedings. In case the Indenture Trustee or the holders of the Loan Certificates shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee or the holders of the Loan Certificates, then and in every such case the Owner Participant, the Indenture Trustee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Indenture Estate, and all rights, remedies and powers of the Indenture Trustee or the holders of the Loan Certificates shall continue as if no such proceedings have been taken.

4.13 No Action Contrary to Lessee's Rights Under Lease. Notwithstanding any of the provisions of this Indenture to the contrary, the Owner Participant, the Indenture Trustee or the holders of the Loan Certificates shall not, so long as no Event of Default under the Lease shall have occurred and be continuing, take any action that would interfere with the Lessee's rights under the Lease, including the right to possession and use of the Rail Cars, except in accordance with the provisions of the Lease.

## SECTION 5

### DUTIES OF INDENTURE TRUSTEE; CERTAIN RIGHTS OF OWNER PARTICIPANT

#### 5.01 Action Upon Indenture Default or Indenture Event of Default.

(a) Notice. In the event the Indenture Trustee shall have actual knowledge of an Indenture Default or an Event of Default under the Indenture, including, without limitation, a failure to pay Rent on the date it becomes due, the Indenture Trustee shall give prompt telegraphic or telephonic notice (but in no event later than five days after such failure) thereof to the Owner Participant, the Lessee and each holder of record of a Loan Certificate (such notice, if given orally, to be confirmed by written notice sent in the manner provided in Section 10.04 hereof).

(b) Conditions for Action. Subject to the terms of Sections 4.02 and 5.04 hereof, the Indenture Trustee shall

take such action, or refrain from taking such action, with respect to any Indenture Default or Event of Default under the Indenture as the Indenture Trustee shall be instructed in writing by a Majority in Interest of Certificate Holders. If the Indenture Trustee shall not have received instructions as above provided within 10 days after notice of any Event of Default under the Indenture shall have been sent in the manner provided in Section 10.04 to the holders of the Loan Certificates, the Indenture Trustee shall, subject to such instructions as may have been or are thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action, but shall be under no duty to, and shall have no liability for its failure or refusal to take or refrain from taking any action with respect to such Event of Default under the Indenture, consistent with the provisions of this Indenture as it shall deem advisable and in the best interest of the holders of the Loan Certificates and shall use the same degree of care and skill in connection therewith as a prudent person would use under the circumstances in the conduct of its own affairs.

(c) Actual Knowledge of Indenture Trustee. For all purposes of this Indenture, in the absence of actual knowledge on the part of an officer in the Corporate Trust Department of the Indenture Trustee, the Indenture Trustee shall not be deemed to have knowledge of an Indenture Default or Event of Default under this Indenture (except in the case of the failure of the Lessee to pay any installment of Basic Rent when due) unless notified in writing by a holder of a Loan Certificate, the Lessee or the Owner Participant.

#### 5.02 Action Upon Instructions Generally.

(a) General Action. Subject to the terms of Sections 5.01, 5.04 and 5.07, upon the written instructions at any time and from time to time of a Majority in Interest of Certificate Holders, the Indenture Trustee shall (i) give such notice or direction or exercise such right, remedy or power to take such action under the Lease, the Participation Agreement or the other Basic Agreements as shall be specified in such instructions and (ii) approve as satisfactory to it all matters required by the terms of the Lease or the other Basic Agreements to be satisfactory to the Owner Participant or the Indenture Trustee, it being understood that without such written instructions the Indenture Trustee shall not approve any such matter as satisfactory to it.

(b) Indenture Estate. Subject to the terms of Sections 5.01, 5.02, 5.04 and 5.07, upon the written instruc-

tions at any time and from time to time of a Majority in Interest of Certificate Holders, the Indenture Trustee shall exercise such right, remedy or power or take such action hereunder to preserve or protect the Indenture Estate (including the discharge of Liens) as shall be specified in such instructions.

(c) Financing Statements. The Indenture Trustee, upon the written instructions at any time and from time to time of a Majority in Interest of Certificate Holders, shall execute any financing statement (and any continuation statement with respect to any such financing statement) or any other similar document relating to the security interest and assignments created by this Indenture, as may be specified in such instructions (which instructions shall be accompanied by an execution form of such financing statement, continuation statement, or other document, as the case may be).

5.03 Action Upon Payment of Loan Certificates or Transfer of Rail Cars.

(a) Release of Indenture Estate. Upon satisfaction of the conditions for termination of this Indenture set forth in Section 10.01, the Indenture Trustee, upon the written request of the Owner Participant, shall, on the Business Day such conditions first are satisfied execute and deliver to, or as directed in writing by, the Owner Participant all appropriate instruments (in due form for recording or filing) reasonably requested by the Owner Participant releasing the Indenture Estate.

(b) Transfer of Rail Cars to Lessor or Lessee. Upon retention or any transfer by the Owner Participant of the Rail Cars pursuant to Sections 8.1, 8.8, 15.1 or 18 of the Lease, or upon the expiration of the Term or the effective date of a renewal of the Lease Term under Section 17 of the Lease, the Indenture Trustee shall, upon receipt of an amount in cash sufficient for (i) the payment of all outstanding fees and expenses of the Indenture Trustee and (ii) the payment in full of the principal of and interest on all Loan Certificates then outstanding and all other amounts then due to all existing or prior holders of such Loan Certificates hereunder or under the Participation Agreement, the Lease or the other Basic Agreements, execute and deliver to, or as directed in writing by, the Owner Participant an instrument of release complying with the preceding paragraph (a).

(c) Release of Rail Cars Upon Transfer After Default. If so directed by a Majority in Interest of Certificate Holders, upon the transfer of the Rail Cars pursuant to Section 14.1 of the Lease, the Indenture Trustee shall execute and deliver as directed in writing by such holders an appropriate instrument (in due form for recording or filing) reasonably requested by the Owner Participant releasing the Rail Cars from the security interests and assignments under this Indenture.

5.04 Indemnification, etc. The Indenture Trustee shall not be required to take any action or refrain from taking any action under Section 4, 5.01 (other than 5.01(a)), 5.02 or 5.03 that shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability unless it shall have been indemnified in a manner satisfactory to it or unless, in the reasonable judgment of the Indenture Trustee, the indemnities of the Lessee shall be adequate for the Indenture purpose. The Indenture Trustee shall not be required to take any action under Section 4, 5.01, 5.02 or 5.03, and no other provision of this Indenture shall be deemed to impose a duty on the Indenture Trustee to take any action, if the Indenture Trustee shall have been advised by counsel (who shall not be an employee of the Indenture Trustee) that such action is contrary to the terms hereof or of any other Basic Agreement or is otherwise contrary to Applicable Law.

5.05 Duties to Remove Liens and Provide Reports, etc. The Indenture Trustee shall, in its individual capacity and at its own cost and expense, promptly take such action as may be necessary duly to discharge all Liens on any part of the Indenture Estate that result from claims against it rising out of events or conditions not related to the administration of the Indenture Estate. The Indenture Trustee will furnish to each holder of a Loan Certificate and the Owner Participant with reasonable promptness after receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Indenture Trustee hereunder or under the Lease or the Participation Agreement, unless, in each case, the Indenture Trustee shall reasonably believe that such holder or the Owner Participant shall heretofore have received copies thereof.

5.06 No Action Except Under Lease, Indenture or Instructions. The Indenture Trustee shall not, and shall not be required to, manage, control, use, sell, dispose of or otherwise deal with the Rail Cars or any other part of



the Indenture Estate except (a) as required by the terms of the Lease, (b) in accordance with the powers granted to, or the authority conferred upon, the Indenture Trustee pursuant to this Indenture or (c) in accordance with the express terms hereof or with written instructions from a Majority in Interest of Participants.

5.07 Certain Rights of Owner Participant. Notwithstanding any other provision of this Indenture (a) the Owner Participant shall retain all rights to Excepted Payments and the right to commence an action at law to obtain such payments and to enforce any judgment with respect thereto, subject, however, to the same limitations on remedies and enforcement set forth in Section 4.03(a); (b) the Owner Participant shall have the right, but not to the exclusion of the Indenture Trustee: (i) to receive from the Lessee all notices, copies of all documents and all information that the Lessee is permitted or required to give or furnish to the "Owner Participant" or the "Lessor", pursuant to the Lease or any other Basic Agreement; (ii) to inspect the Rail Cars and the records of the Lessee and otherwise exercise rights of the "Lessor" under Section 16 of the Lease; (iii) to retain all rights with respect to insurance that Section 8 of the Lease specifically confers upon the "Owner Participant" or the "Lessor"; (iv) to provide such insurance as the Lessee shall have failed to maintain or as the Owner Participant may desire; (v) to retain all rights with respect to replacement parts and improvements (whether removable or non-removable) and the Lessee's use and operation or modification of the Rail Cars that Sections 12.1 and 12.2 of the Lease specifically confers upon the "Owner Participant" or the "Lessor"; (vi) to enforce the rights of the "Lessor" under Section 6 of the Lease; (vii) subject to the other applicable provisions of this Indenture, to retain the right to perform for the Lessee under Section 20 of the Lease; (viii) to consult with the holders of Loan Certificates as to enforcing compliance by the Lessee with the provisions of the Lease; (ix) the right to make any determination of the Owner Participant's Net Economic Return and to adjust Interim Rent or Basic Rent and the Percentages as provided in Section 10 of the Participation Agreement and Sections 4 and 8 of the Lease, and to execute amendments of the Lease in connection with adjustments of Basic Rent and the Percentages; (x) so long as no Event of Default under this Indenture shall have occurred and be continuing, the Owner Participant shall have the right, to the exclusion of the Indenture Trustee, to exercise the rights of the "Lessor" under Section 17 of the Lease with respect to the Lessee's renewal of the Lease and the rights of "Lessor" under the

Appraisal Procedure (as defined in the Lease) and (xi) to the extent not covered by the preceding provisions of this Section 5.07, the Owner Participant shall have the right, but not to the exclusion of the Indenture Trustee, to give or withhold consents or approvals, and to accept as satisfactory to it performance of the Lessee's obligations, under the Lease and the Participation Agreement so long as no Event of Default under this Indenture shall have occurred and be continuing.

## SECTION 6

### THE INDENTURE TRUSTEE

6.01 Acceptance of Trusts and Duties. The Indenture Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture, and agrees to receive and disburse all moneys constituting part of the Indenture Estate in accordance with the provisions hereof. The Indenture Trustee shall not be answerable or accountable under any circumstances, except (a) for its own gross negligence or willful misconduct, (b) in the case of the inaccuracy of any representation or warranty contained in, or referred to by reference in, Section 6.03 or (c) for the performance of its obligations under the first sentence of Section 5.05; and the Indenture Trustee shall not be liable for any action or inaction of the Owner Participant.

6.02 Absence of Duties Except as Specified. The Indenture Trustee shall have no duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Rail Cars or any other part of the Indenture Estate, or otherwise to take or refrain from taking any action under, or in connection with, this Indenture or the Lease, except as expressly provided by the terms of this Indenture, or as expressly provided in written instructions from a Majority in Interest of Participants, and no implied duties or obligations shall be read into this Indenture against the Indenture Trustee. Except in accordance with written instructions or requests furnished pursuant to Section 5 or as expressly provided in Section 5, the Indenture Trustee shall have no duty (a) to see to any filing of any financing or other statements or continuation statements in respect of any such filing, (b) to see to any insurance on the Rail Cars or to effect or maintain any such insurance, whether or not the Lessee shall be in default with respect thereto, (c) to see to the payment or discharge of any tax, assessment or other

governmental charge or any Lien of any kind owing with respect to, or assessed or levied against, any part of the Indenture Estate, (d) to confirm or verify or to inquire into the failure to receive any financial statements of the Lessee or (e) to inspect the Rail Cars at any time or ascertain or inquire as to the performance or observance of the Lessee's covenants under the Lease. The Indenture Trustee shall have no obligation or liability under the Lease by reason of or arising out of this Indenture, and the Indenture Trustee shall not be required or obligated in any manner, except as herein expressly provided, to perform or fulfill any of the obligations of the Owner Participant under any of the agreements to which it is a party, or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

6.03 No Representations or Warranties. THE INDENTURE TRUSTEE MAKES (a) NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE RAIL CARS, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE RAIL CARS and (b) no representation or warranty as to the validity or enforceability of this Indenture, the Participation Agreement, the Loan Certificates, the Lease or any other Basic Agreement or as to the correctness of any statements contained in any thereof, except to the extent that any such statement is expressly made therein by the Indenture Trustee and except as set forth in Section 5.02(c) of the Participation Agreement.

6.04 No Segregation of Moneys; No Interest. Subject to the terms of Section 3.04 any money received by the Indenture Trustee hereunder need not be segregated in any manner except to the extent required by law, and such moneys may be deposited under such general conditions as may be prescribed by law in the general banking department of the Indenture Trustee, American Bank & Trust Co. of Pa. or such other bank to which the Owner Participant shall have previously consented, and the Indenture Trustee shall not be liable for any interest thereon.

6.05 Reliance; Agents; Advice of Counsel. (a) The Indenture Trustee shall not incur liability to anyone in acting upon any signature, instrument, notice, resolution, endorsement, request, consent, order, certificate, report,

opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Indenture Trustee may accept in good faith a copy of a resolution of the board of directors of the Lessee, certified by the Secretary or an Assistant Secretary of the Lessee as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by such Board and that the same is in full force and effect. As to the amount of any payment to which any Person is entitled pursuant to clause "First" of Section 3.02(a) or clause "Second" of Section 3.03, the Indenture Trustee may for all purposes hereof rely on an Officer's Certificate of such Person. As to any fact or matter the manner of ascertainment of which is not specifically described herein, or as to which the Indenture Trustee shall deem it desirable to ascertain prior to taking, suffering or omitting any action hereunder, the Indenture Trustee may for all purposes hereof rely on a certificate signed by an authorized officer of the Lessee or other appropriate Person as to such fact or matter, and such certificate shall constitute full protection to the Indenture Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. The Indenture Trustee shall furnish to the Owner Participant upon request such information and copies of such documents as the Indenture Trustee may have and as are necessary for the Owner Participant to perform its duties under Section 2 hereof.

(b) In the administration of the trusts hereunder, the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Indenture Estate (but subject to the priorities of payment set forth in Section 3), consult with counsel, accountants and (with the prior approval of a Majority in Interest of Certificate Holders) other skilled persons to be selected and retained by it (other than persons regularly in its employ), and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons given within such person's or persons' particular area of competence and the Indenture Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

6.06 No Action in Individual Capacity. Except as otherwise provided in Sections 2.08, 5.05 and 6.01, the Indenture Trustee acts hereunder solely as trustee as herein provided and not in its individual capacity, and all Persons,

other than any holder of a Loan Certificate as provided in this Indenture, having any claim against the Indenture Trustee by reason of the transactions contemplated hereby shall, subject to the Lien and priorities of payment as herein provided, look only to the Indenture Estate for payment or satisfaction thereof.

6.07 No Compensation from Participants, etc. The Indenture Trustee agrees that it shall have no right against any holder of a Loan Certificate or the Owner Participant for any fee or reimbursement as compensation for its services or recovery of its expenses hereunder, but shall look exclusively to the Indenture Estate and the duties of the Lessee under the Lease and the Participation Agreement as the source of funding for its fees and expenses.

## SECTION 7

### SUCCESSOR INDENTURE TRUSTEES

7.01 Resignation or Removal of Indenture Trustee; Appointment of Successor. (a) Resignation or Removal. The Indenture Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant and each holder of a Loan Certificate, such resignation to be effective on the acceptance of appointment by the successor Indenture Trustee pursuant to the provisions of Section 7.01(b). In addition, a Majority in Interest of Certificate Holders may at any time remove the Indenture Trustee without cause by an instrument in writing delivered to the Owner Participant and the Indenture Trustee, and the Indenture Trustee shall give prompt written notification thereof to each holder of a Loan Certificate. Such removal will be effective on the acceptance of appointment by the successor Indenture Trustee pursuant to the provisions of Section 7.01(b). In the case of the resignation or removal of the Indenture Trustee, a Majority in Interest of Certificate Holders may appoint a successor Indenture Trustee by an instrument signed by such Certificate Holders. If a successor Indenture Trustee shall not have been appointed within 30 days after such resignation or removal, the Indenture Trustee, the Owner Participant or any holder of a Loan Certificate may apply to any court of competent jurisdiction to appoint a successor Indenture Trustee to act until such time, if any, as a successor shall have been appointed by a Majority in Interest of Certificate Holders as above provided. The successor Indenture Trustee so appointed by such court shall immediately and without

further act be superseded by any successor Indenture Trustee appointed by a Majority in Interest of Certificate Holders as above provided.

(b) Acceptance of Appointment. Any successor Indenture Trustee, whether appointed by a court or by a Majority in Interest of Certificate Holders, shall execute and deliver to the Owner Participant, each holder of a Loan Certificate and the predecessor Indenture Trustee an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without further act, shall become vested with all the estates, properties, rights, powers and duties of the predecessor Indenture Trustee hereunder in the trusts hereunder applicable to it with like effect as if originally named the Indenture Trustee herein; but nevertheless upon the written request of such successor Indenture Trustee or a Majority in Interest of Certificate Holders, such predecessor Indenture Trustee shall execute and deliver an instrument transferring to such successor Indenture Trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights and powers of such predecessor Indenture Trustee, and such predecessor Indenture Trustee shall duly assign, transfer, deliver and pay over to such successor Indenture Trustee all moneys or other property then held by such predecessor Indenture Trustee hereunder.

(c) Qualifications. Any successor Indenture Trustee, however appointed, shall be a bank or trust company having a combined capital and surplus of at least \$100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms.

(d) Merger, etc. Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of Section 7.01(c), be the Indenture Trustee under this Indenture without further act.

7.02 Appointment of Additional and Separate Trustees. (a) Appointment. Whenever (i) the Indenture Trustee shall deem it necessary or prudent in order to conform to any law of any jurisdiction in which the Rail Cars or any other part of the Indenture Estate, or any part thereof, shall be situated or to make any claim or bring any suit with respect

to or in connection with the Indenture Estate, the Indenture, the Lease, the Loan Certificates or any of the transactions contemplated by the Basic Agreements, (ii) the Indenture Trustee shall be advised by counsel, satisfactory to it, that it is so necessary or prudent in the interest of the holders of the Loan Certificates or (iii) the Indenture Trustee shall have been requested to do so by a Majority in Interest of Certificate Holders, then in any such case, the Indenture Trustee and the Owner Participant shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper to constitute another bank or trust company or one or more Persons approved by the Indenture Trustee, either to act as additional trustee or trustees of all or any part of the Indenture Estate, jointly with the Indenture Trustee, or to act as separate trustee or trustees of all or any part of the Indenture Estate, in any such case with such powers as may be provided in such indenture supplemental hereto, and to vest in such bank, trust company or Person as such additional trustee or separate trustee, as the case may be, any property, title, right or power of the Indenture Trustee deemed necessary or advisable by the Indenture Trustee, subject to the remaining provisions of this Section 7.02. In the event the Owner Participant shall not have joined in the execution of such indenture supplemental hereto within 15 days after the receipt of a written request from the Indenture Trustee so to do, or in the event an Indenture Default shall have occurred and be continuing, the Indenture Trustee may act under the foregoing provisions of this Section 7.02 without the necessity of any action by or consent of the Owner Participant in either of such contingencies. The Indenture Trustee may execute, deliver and perform any such conveyance, assignment or other instrument in writing as may be required by any additional trustee or separate trustee for more fully and certainly vesting in and confirming to it or him any property, title, right or power which by the terms of such indenture supplemental hereto are expressly to be conveyed or conferred to or upon such additional trustee or separate trustee, and the Owner Participant shall, upon the Indenture Trustee's request, join therein and execute, acknowledge and deliver the same; and the Owner Participant hereby makes, constitutes and appoints the Indenture Trustee its agent and attorney-in-fact for it and in its name, place and stead to execute, acknowledge and deliver any such deed, conveyance, assignment or other instrument in the event that the Owner Participant shall not itself execute and deliver the same within 15 days after receipt by it of such request so to do.

(b) Powers. Every additional trustee and separate trustee hereunder shall, to the extent permitted by law, be appointed and act, and the Indenture Trustee shall act, subject to the following provisions and conditions:

(i) all powers, duties, obligations and rights conferred upon the Indenture Trustee in respect of the receipt, custody, payment of moneys or the investment of moneys, shall be exercised solely by the Indenture Trustee;

(ii) all other rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such additional or separate trustee(s) jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Indenture Estate in any such jurisdiction) shall be exercised and performed by such additional or separate trustee(s);

(iii) no power hereby given to, or exercisable as provided herein by, any such additional or separate trustee(s) shall be exercised hereunder by such additional or separate trustee(s) except jointly with, or with the consent of, the Indenture Trustee; and

(iv) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

If at any time the Indenture Trustee shall deem it no longer necessary or prudent in order to conform to any such law or take any such action or shall be advised by counsel that it is no longer so necessary or prudent in the interest of the holders of the Loan Certificates, or in the event that the Indenture Trustee shall have been requested to do so in writing by a Majority in Interest of Certificate Holders, the Indenture Trustee and the Owner Participant shall execute and deliver an indenture supplemental hereto and all other instruments and agreements necessary or proper to remove any additional trustee or separate trustee. In the event the Owner Participant shall not have joined in the execution of



such indenture supplemental hereto within 15 days after the receipt of a written request from the Indenture Trustee so to do, or in the event an Indenture Default shall have occurred and be continuing, the Indenture Trustee may act under the foregoing provisions of this paragraph without the necessity of any action by or consent of the Owner Participant.

(c) Indenture Trustee as Agent. Any additional trustee or separate trustee may at any time by an instrument in writing constitute the Indenture Trustee its agent or attorney-in-fact, with full power and authority, to the extent that may be authorized by law, to do all acts and things and exercise all discretions that it is authorized or permitted to do or exercise, for and in its behalf and in its name. In case any such additional trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the assets, property, rights, powers, trusts, duties and obligations of such additional trustee or separate trustee, as the case may be, so far as permitted by law, shall vest in and be exercised by the Indenture Trustee, without the appointment of a new successor to such additional trustee or separate trustee, unless and until a successor is appointed in the manner hereinbefore provided.

(d) Requests, etc. Any request, approval or consent in writing by the Indenture Trustee to any additional trustee or separate trustee shall be sufficient warrant to such additional trustee or separate trustee, as the case may be, to take such action as may be so requested, approved or consented to.

(e) Subject to Indenture, etc. Each additional trustee and separate trustee appointed pursuant to this Section 7 shall be subject to, and shall have the benefit of, Sections 4 through 10 hereof insofar as they apply to the Indenture Trustee. Notwithstanding any other provision of this Section 7.02, the powers of any additional trustee or separate trustee appointed pursuant to this Section 7.02 shall not in any case exceed those of the Indenture Trustee hereunder.

## SECTION 8

### SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS

8.01 Conditions and Limitations. At any time and from time to time, but only upon the written request of a Majority in Interest of Certificate Holders and the Owner Participant, (a) the Indenture Trustee and the Owner Participant shall execute a supplement hereto for the purpose of adding provisions to, or changing or eliminating or waiving provisions of, this Indenture as specified in such request, (b) the Owner Participant and the Indenture Trustee shall enter into such written amendment of, modification of, or supplement to the Lease or any other Basic Agreement to which Lessee is a party as the Lessee may agree to and as may be specified in such request, and (c) the Indenture Trustee and the Owner Participant shall execute and deliver such written waiver or modification of the terms of any other of the Basic Agreements to which it is a party or which is assigned to it hereunder, as may be specified in such request; provided, however, that:

(i) whether or not an Indenture Default shall have occurred and be continuing, without the consent of the Owner Participant and each holder of a Loan Certificate then outstanding, no such supplement to this Indenture or amendment of, supplement to, or waiver or modification of any Basic Agreement, shall:

(A) modify (1) any clause of the following provisions hereof: the Granting Clause, Sections 1, 2.02, 2.03, 2.08, 2.10, 3.01, 3.02, 3.03, 3.07, 3.08, 4.02 (to the extent it refers to the rights of the Owner Participant under Section 4.03), 5.07, 8.01, 8.02, 8.03, 9.05, 9.06, 9.07, 9.08, 10.01, 10.05, 10.06, 10.07, 10.11 or 10.12 or (2) the definitions of the terms "Amortization Amount", "Business Day", "Event of Default", "Excepted Payment", "Indenture Default", "Indenture Estate", "Lease Default" and "Majority in Interest of Participants",

(B) reduce, modify or amend any indemnities in favor of any Indemnified Person (except that any Person may consent to any

reduction or waiver of any indemnity payable to it),

(C) reduce the amount (except as provided in Section 4 of the Lease) or extend the time of payment of Rent, Stipulated Loss Value or Termination Value as set forth in the Lease,

(D) modify, amend or supplement the Lease or consent to any assignment of the Lease, in any manner that would have the effect of releasing the Lessee from its obligations in respect of the payment of Rent, Stipulated Loss Value or Termination Value for the Rail Cars or changing the absolute and unconditional character of such obligations as set forth in Section 2 of the Lease, or

(E) create any additional obligations, or increase any obligations, of any Participant or the Indenture Trustee,

(ii) whether or not an Indenture Default shall have occurred and be continuing, without the consent of each holder of a Loan Certificate then outstanding, no such supplement to this Indenture shall modify (A) any of the following provisions hereof: Sections 2.01 - 2.07, inclusive, 2.09, 3.05, 3.06, 4.01, 5.03, 9.01 or 9.03 or (B) the definitions of the terms "Interest Period" and "Majority in Interest of Certificate Holders".

Notwithstanding the foregoing, (A) the Owner Participant may enter into an amendment of the Participation Agreement or the Lease that does not adversely affect the interests of the present or past holder of any Loan Certificate or the Indenture Trustee, if the Owner Participant shall have given the Indenture Trustee and each present and past holder of a Loan Certificate 30 days' prior written notice of such proposed amendment and the Indenture Trustee and a Majority in Interest of Certificate Holders shall have agreed that such amendment does not adversely affect the interests of the holders of Loan Certificates, (B) subject to Section 5.03, without the consent of each holder of a Loan Certificate, no such supplement to this Indenture or waiver or modification of the terms thereof or any other document shall permit the creation of any Lien on the Indenture Estate or any part thereof except as herein expressly permitted, or

shall deprive any holder of a Loan Certificate of the benefit of the Lien of this Indenture on the Indenture Estate and (C) without the consent of the Guarantor, no such supplement to this Indenture or waiver or modification of the terms hereof shall permit or require any action contrary to, or disturb the Lessee's or the Guarantor's rights under, the Lease, except in accordance with the provisions of the Lease or alter or modify the provisions of the Lessee's or the Guarantor's rights herein in a manner adverse to them.

8.02 Supplemental Indentures. Without the consent of any holder of a Loan Certificate but subject to the provisions of Section 8.03, at the request of either the Indenture Trustee or the Owner Participant, the other shall join with it in entering into any indenture supplemental hereto (a) to evidence the succession of a new Person as the Indenture Trustee hereunder, the removal of the Indenture Trustee or the appointment of any co-trustee(s) or additional trustee(s), in each case in accordance with the terms of Section 7 or (b) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, to convey, transfer, assign, mortgage or pledge any property to or with the Indenture Trustee, or otherwise to permit the taking of action with respect to matters arising under this Indenture which shall not be inconsistent with the provisions of this Indenture; provided, that such action shall not adversely affect the interests of the present or any past holders of any Loan Certificates then outstanding or the Indenture Trustee, and each such holder and the Indenture Trustee shall have received an opinion of independent counsel, satisfactory to each such party, to such effect.

8.03 Owner Participant and Indenture Trustee Protected. If in the opinion of either the Indenture Trustee or the Owner Participant any document required to be executed by it pursuant to the terms of Section 8.01 or 8.02 adversely affects any right or duty of or affects any immunity or indemnity in favor of it under this Indenture or the Participation Agreement, it may in its discretion decline to execute such document. With every such document required to be executed by either the Indenture Trustee or the Owner Participant pursuant to the terms of Section 8.01 or 8.02, it shall be furnished by counsel satisfactory to a Majority in Interest of Participants with an opinion satisfactory in form and substance to it that such document complies with the provisions of this Indenture, does not deprive it or any of the holders of Loan Certificates of the benefits of this Indenture or of the security interest and assignment hereby

created or purported to be created with respect to the Indenture Estate and that all consents required by the terms of Section 8.01 in connection with the execution of such document have been obtained. Each of the Owner Participant and the Indenture Trustee shall be fully protected in relying on such opinion.

8.04 Form of Request. It shall not be necessary for any written request of the holders of Loan Certificates furnished pursuant to Section 8.01 to specify the particular form of the proposed documents to be executed pursuant to that Section, but it shall be sufficient if such request shall indicate the substance thereof.

8.05 Documents Mailed to Holders of Loan Certificates. Promptly after the execution by the Owner Participant or the Indenture Trustee of any document entered into pursuant to Section 8.01 or 8.02, the Indenture Trustee shall mail, by first class mail, postage prepaid, a conformed copy thereof to each holder of a Loan Certificate at its address last known to the Indenture Trustee, but any failure to mail such conformed copies shall not impair or affect the validity of such document.

## SECTION 9

### AGREEMENTS OF OWNER PARTICIPANT

9.01 Liability of Owner Participant Under Other Documents. Neither the Indenture Trustee nor any holder of a Loan Certificate shall be liable under the Lease or the Participation Agreement to perform any of the obligations of the Owner Participant thereunder.

9.02 Appointment of Indenture Trustee as Attorney. Except in respect of Excepted Payments, and except as expressly provided herein, the Owner Participant hereby constitutes and appoints (which appointment is coupled with an interest) the Indenture Trustee the true and lawful attorney of the Owner Participant, irrevocably, with full power (in the name of the Owner Participant or otherwise) to ask, require, demand and receive any and all moneys and claims for moneys due and to become due under or arising out of the Lease or the Participation Agreement, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Indenture Trustee may deem to be necessary or advisable.

9.03 Payments of Moneys to Indenture Trustee. The Owner Participant agrees that promptly on receipt thereof, it will transfer to the Indenture Trustee any and all moneys from time to time received by it and subjected or intended to be subjected to the lien of this Indenture, or otherwise required to be paid to the Indenture Trustee, for distribution or retention by the Indenture Trustee pursuant to this Indenture, except that the Owner Participant shall accept any amounts properly distributed to it by the Indenture Trustee under this Indenture.

9.04 Further Assurances; Financing Statements. At any time and from time to time, upon the request of the Indenture Trustee, the Owner Participant shall promptly and duly execute and deliver any and all such further instruments and documents as the Indenture Trustee may deem desirable in obtaining the full benefits of the security interests and assignments created or intended to be created hereby and of the rights and powers herein granted. Upon the instructions at any time and from time to time of the Indenture Trustee, the Owner Participant shall execute any financing statement (and any continuation statement with respect to any such financing statement) or any other similar document relating to the security interests and assignment created by this Indenture, as may be specified in such instructions.

9.05 Limitations on Actions of Owner Participant. Except as otherwise provided in Sections 4.03(b) and 5.07, the Owner Participant agrees that, except upon the instructions of the Indenture Trustee, it will take no action with respect of any part of the Indenture Estate. Except as otherwise specifically provided herein, the Owner Participant shall not exercise any election or option or make any decision or determination under or give any notice, consent, waiver or approval under or in respect of the Lease and shall not take any other steps to exercise any rights, powers and remedies on the part of the Owner Participant under or with respect to the Lease as the Owner Participant except as it may be instructed to take by the Indenture Trustee pursuant to the terms of this Indenture, and in any such case the Owner Participant shall be fully protected in relying on an opinion of counsel to the Indenture Trustee to the effect that such instructions of the Indenture Trustee are given pursuant to the terms of this Indenture. It is understood that the Indenture Trustee shall not be required to give any instructions to the Owner Participant under this Section 9.05 unless the Indenture Trustee shall have received written instructions pursuant to Section 5.02 or as may otherwise

be expressly required pursuant to the terms of this Indenture. The Owner Participant warrants and represents that it has not assigned or pledged, and hereby covenants that it will not assign or pledge so long as this Indenture shall remain in effect, any of its estate, right, title or interest hereby assigned, to anyone other than the Indenture Trustee, and that it will not, except as provided in this Indenture, (a) enter into any agreement amending or supplementing the Lease or the Participation Agreement, (b) accept any payment other than Excepted Payments from, or settle or compromise any claim against, the Lessee or any other persons arising under any of such agreements (other than claims relating to Excepted Payments), (c) submit or consent to the submission to arbitration of any dispute, difference or other matter arising under or in respect of any such agreements (except as such pertain to Excepted Payments) or the rights of the Indenture Trustee hereunder or thereunder or (d) take or omit to take any action, the taking or omission of which might result in an alteration or impairment of any such agreements (except as such pertain to Excepted Payments) or the security interests and assignments created or intended to be created hereby or of any of the rights created hereby or thereby. Nothing in this Section 9.05 shall preclude the adjustment by the Owner Participant of any claims under liability insurance policies maintained by the Lessee under the Lease to the extent insurance proceeds are payable thereunder to or for the benefit of the Owner Participant for its own account.

9.06 Notice of Indenture Default; Furnishing of Documents. In the event the Owner Participant shall have knowledge of an Indenture Default (which for purposes of this Indenture shall mean actual knowledge of an Indenture Default on the part of an officer of the Owner Participant), the Owner Participant shall give prompt telegraphic or telephonic notice (such notice, if given orally, to be confirmed by written notice sent in the manner provided in Section 10.04) of such Indenture Default, to the Indenture Trustee and each holder of a Loan Certificate, which notice shall set forth in reasonable detail the circumstances surrounding such Indenture Default, and shall describe in reasonable detail the action the Owner Participant is taking or proposes to take in respect thereof; provided, however, that the receipt by the Owner Participant of written notice of such Indenture Default from the Indenture Trustee shall be deemed to satisfy the notice requirement of this Section 9.06.

The Owner Participant shall furnish to the Indenture Trustee and to each holder of a Loan Certificate, promptly upon receipt thereof, a duplicate or copy of all

reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Owner Participant under the Lease or the Participation Agreement, including, without limitation, a copy of each insurance certificate, report or notice or other evidence received pursuant to Section 8 of the Lease, unless the Owner Participant shall reasonably believe that the Indenture Trustee and each holder of a Loan Certificate shall have received copies thereof.

9.07 No Representations or Warranties. THE OWNER PARTICIPANT MAKES NO REPRESENTATION OR WARRANTY AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE RAIL CARS OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE RAIL CARS, except that the Owner Participant hereby represents, warrants and covenants to the Indenture Trustee and each holder of a Loan Certificate that (a) as of each Funding Date the Owner Participant shall have received whatever title to the Rail Cars as was conveyed to it by the Lessee on such Funding Date, (b) as of such Funding Date the Rail Cars shall be free of Lessor's Liens attributable to the Owner Participant and (c) the Rail Cars shall while a part of the Indenture Estate and at the time of any conveyance therefrom be free of Lessor's Liens or, if at any time the Rail Cars become subject to a Lessor's Lien, the Owner Participant shall promptly remove such Lessor's Lien. The Owner Participant also makes no representation or warranty as to the enforceability of this Indenture, the Participation Agreement, the Lease, the Loan Certificates or any other Basic Agreement or as to the correctness of any statement contained in any thereof except to the extent that any such statement is expressly made therein by the Owner Participant and except as set forth in Section 5.02(a) of the Participation Agreement.

9.08 Discharge of Liens. The Owner Participant will, at its own cost and expense, promptly take such action as may be necessary to discharge any Liens created, incurred or suffered to exist by it of the type referred to in Section 6.01(a)(ii) of the Participation Agreement.



## SECTION 10

### MISCELLANEOUS

10.01 Termination of Indenture. This Indenture and the trusts created hereby shall terminate and this Indenture shall be of no further force or effect upon the earlier of (a) payment in full of the principal of, and interest on, all Loan Certificates then outstanding and all other amounts then due to the Indenture Trustee and any holder of any Loan Certificate hereunder or under the Lease or the Participation Agreement (directly or through any predecessor holder of such Loan Certificate), or (b) the sale or other final disposition of all property subjected or intended to be subjected to the Lien of this Indenture and the final distribution by the Indenture Trustee of all moneys or other property or proceeds constituting part of the Indenture Estate in accordance with the terms of Section 3; provided, however, that if at such time referred to in clause (b) the Lessee shall not have fully complied with all of the terms of the Lease and the Participation Agreement, this Indenture and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof until such time as the Lessee, or the Owner Participant, as the case may be, has fully complied with such terms. Upon any such payment in full of all amounts referred to in clause (a), the Indenture Trustee shall pay all moneys or other properties or proceeds held by it under this Indenture to the Owner Participant and shall give notice to the Lessee of such payment, take the action contemplated by Section 5.03(a) hereof and this Indenture and the trusts created hereby shall terminate and shall be of no further force or effect.

10.02 No Legal Title to Indenture Estate in Holders of Loan Certificates. No holder of a Loan Certificate shall have legal title to any part of the Indenture Estate. No transfer, by operation of law or otherwise, of any Loan Certificate or other rights, title and interest of any holder of a Loan Certificate in and to the Indenture Estate or hereunder shall entitle any successor or transferee of such holder to an accounting or to the transfer to it of legal title to any part of the Indenture Estate.

10.03 Sale of Rail Cars by Indenture Trustee Is Binding. Any sale or other conveyance of the Rail Cars by the Indenture Trustee made pursuant to the terms of this Indenture or of the Lease shall bind the Owner Participant and the holders of Loan Certificates and shall be effective to transfer or convey all right, title and interest of the

Indenture Trustee, the Owner Participant and the holders of Loan Certificates in and to the Rail Cars. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

10.04 Notices. All notices, consents, directions, demands and other communications required under the terms and provisions hereof shall be in writing, and shall become effective when delivered by hand or received by telex, telecopier, telegram, cable or registered or certified first class mail, postage prepaid, and shall be addressed, if addressed to the Owner Participant, at Four Embarcadero Center, Suite 1200, San Francisco, California 94111, Attention: Lease Investments, Telex No. 910372 2123 Answerback SPLC-SFO, if addressed to the Indenture Trustee at 35 North 6th Street, Box 1102, Reading, Pennsylvania 19601, Attention: Corporate Trust Department, Telecopy 215-320-2428, and if addressed to a Participant or the Lessee, at the address specified in Section 13.01 of the Participation Agreement.

10.05 Payments Due Other Than on Business Days. In any case where the scheduled date for any payment of interest on or principal of a Loan Certificate or other payment hereunder shall not be a Business Day, then such payment shall be made on the next succeeding Business Day with the same force and effect as if made on such scheduled date and interest shall accrue on the outstanding principal amount of such Loan Certificate from and after such scheduled date to the date of payment at the rate or rates of interest then in effect with respect to such Loan Certificate, calculated on the basis referred to in Section 2 of this Indenture; provided, that if such next succeeding Business Day is in a different calendar year, then such payment shall be made on the next preceding Business Day.

10.06 Separability. Any provision of this Indenture that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.07 Written Changes Only. No term or provision of this Indenture or any Loan Certificate may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party or other person against whom enforcement of the change, waiver, discharge or

termination is sought and any waiver of the terms hereof or of any Loan Certificate shall be effective only in the specific instance and for the specific purpose given, all in accordance with the provisions of Section 8.01 and 8.02.

10.08 Separate Counterparts. This Indenture may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. It shall not be necessary, when making proof of this Indenture, to produce or account for more than one counterpart.

10.09 Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and each holder of a Loan Certificate. Any request, notice, direction, consent, waiver or other instrument or action by any holder of a Loan Certificate shall bind the successors and assigns of such holder.

10.10 Headings; References, etc. The headings of the various Sections herein and the Table of Contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to Sections or subsections without reference to the document in which they are contained are references to this Indenture.

10.11 No Guarantee. Nothing contained in this Indenture shall be deemed to constitute a guarantee by the Lessee of payment of any of the Loan Certificates or shall give rise to any inference that the Lessee has so guaranteed such payment.

10.12 Governing Law. This Indenture shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance, provided that nothing in this Indenture or in any other Basic Agreement shall be deemed to constitute a waiver of any rights which any holder of a Loan Certificate may have under applicable federal law relating to the amount of interest which such holder may contract for, take, receive or charge under such Loan Certificate or hereunder.

10.13 Exercise of Rights Subject to Applicable Law. All rights, remedies and powers provided by this Indenture may be exercised, and all waivers, consents and releases

provided for herein are effective, only to the extent that the exercise thereof does not violate any provision of Applicable Laws, and all provisions of this Indenture are intended to be subject to all provisions of Applicable Laws that may be controlling and to the extent necessary so that they will not render this Indenture invalid, unenforceable or not entitled to be recorded or filed under the provisions of Applicable Laws.

10.14 Security Agreement. This Indenture constitutes a security agreement for purposes of the Uniform Commercial Code of all applicable jurisdictions. Any completely executed counterpart of this Indenture may be filed as a security agreement or financing statement or as both. The addresses of the Owner Participant, as debtor, and the Indenture Trustee, as secured party, are shown in Section 10.04.

10.15 Consent to Jurisdiction. The Owner Participant hereby irrevocably submits to the jurisdiction of any New York state court or any federal court located in the State of New York over any action or proceeding commenced or maintained by the Indenture Trustee or any successor or assign and arising out of or relating to this Agreement and the other Basic Agreements to which the Owner Participant is a party, and the Owner Participant hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard in such state or federal court. The Owner Participant hereby irrevocably waives any objection it may now have or hereafter acquire to the laying of venue of any such action or proceeding brought in any such court and any claim it may now or hereafter acquire that any such action or proceeding brought in any such court has been brought in an inconvenient forum. The Owner Participant agrees that final judgment in any such action or proceeding brought in any such court shall be conclusive and binding upon the Owner Participant and may be enforced in any competent court located elsewhere. The Owner Participant irrevocably consents to the service of the summons and complaint and any other process in any such action or proceeding by the mailing of copies of such process to the Owner Participant at its address specified in Section 10.04 by registered or certified mail, return receipt requested. Nothing in this section shall affect the right of the Indenture Trustee to serve legal process in any other manner permitted by law or to bring any action or proceeding against the Owner Participant or its property in any other jurisdiction.

10.16 Interest. Notwithstanding any provisions to the contrary contained herein or in any Loan Certificate or any of the Basic Agreements, in no event shall any Loan Certificate or any Basic Agreement require the payment of interest to, or permit the collection of interest by, the holder of a Loan Certificate in excess of the Highest Lawful Rate. If the effective rate of interest that would otherwise be payable to the holder of the Loan Certificate under such Loan Certificate or any Basic Agreement would exceed the Highest Lawful Rate, then the rate of interest that would otherwise be payable to such holder pursuant to such Loan Certificate or the Basic Agreements in excess of the Highest Lawful Rate shall be refunded to the Owner Participant. All calculations of the rate of interest contracted for, charged or received by any holder of a Loan Certificate under such Loan Certificate or the Basic Agreements that are made for the purpose of determining whether such rate exceeds the Highest Lawful Rate shall be made, to the extent permitted by Applicable Laws, by amortizing, prorating and spreading in equal parts during the full stated term of the indebtedness evidenced by such Loan Certificate all interest at any time contracted for, charged or received by such holder in connection therewith.

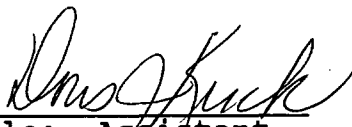
If at any time the amount of interest payable to any holder of a Loan Certificate on any date shall be computed at the Highest Lawful Rate pursuant to the first paragraph of this Section 10.16 and if the amount of interest otherwise payable to such holder in respect of any subsequent interest computation period would be less than the amount of interest payable to such holder computed at the Highest Lawful Rate, then the amount of interest payable to such holder in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate until the total amount of interest payable to such holder shall equal the total amount of interest which would have been payable to such holder if the total amount of interest had been computed without giving effect to the first paragraph of this Section plus, to the extent permitted by Applicable Law, interest on such interest at the same rate of accrual.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture and Security Agreement to be duly executed and delivered and acknowledged by their respective officers thereunto duly authorized, as of the day and year first above written.

SECURITY PACIFIC LEASING CORPORATION  
as Owner Participant

By:   
Title: Assistant Secretary

MERIDIAN TRUST COMPANY,  
as Indenture Trustee

By:   
Title: Assistant  
Vice President

STATE OF NEW YORK            )  
                                  ):        ss.:  
COUNTY OF NEW YORK        )

I, MARY K. BENDICK a Notary Public in and for the County and State aforesaid, certify that Candace L. Hage personally came before me this day and acknowledged that she is an Assistant Secretary of Security Pacific Leasing Corporation, a corporation organized and existing under the laws of the State of Delaware, and that by authority duly given and as the act of the said corporation (in its indicated capacities), the foregoing instrument was signed in its name by one of its Assistant Secretaries, and acknowledged.

Witness my hand and official seal this 17<sup>th</sup> day of May, 1985.

Mary K. Bendick  
Notary Public

[Notarial Seal]  
My Commission Expires:

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MARY K. BENDICK  
Notary Public, State of New York  
No. 24-0237960  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1987

STATE OF NEW YORK                    )  
  :  
COUNTY OF NEW YORK                )       SS.:

I, Patricia A. Casey, a Notary Public in and for the County and State aforesaid, certify that Doris J. Krick personally came before me this day and acknowledged that she is an Assistant Vice President of Meridian Trust Company, a Pennsylvania trust company, and that by authority duly given and as the act of the said trust company (in its indicated capacities), the foregoing instrument was signed in its name by said Doris J. Krick.

Witness my hand and official seal this 17<sup>th</sup> day of May, 1985.

Patricia A. Casey  
Notary Public

[Notarial Seal]  
My Commission Expires:  
March 30, 1987

PATRICIA A. CASEY  
Notary Public, State of New York  
No. 24-4800295  
Qualified in Kings County  
Cert. Filed in New York County  
Commission Expires March 30, 1987



REFER TO APPENDIX A TO THE PARTICIPATION  
AGREEMENT FOR APPENDIX A TO THIS INDENTURE.

APPENDIX B

GENERAL ELECTRIC RAILCAR SERVICES CORPORATION

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Leveraged Lease Financing  
of 150 Covered Hopper Cars

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PRINCIPAL REPAYMENT TABLE(\*)

<u>Semiannual Payment Date</u>	<u>Principal Recovery</u>
2/1/86	11907.36
8/1/86	12636.69
2/1/87	13410.68
8/1/87	14232.09
2/1/88	15103.80
8/1/88	16028.91
2/1/89	17010.68
8/1/89	18052.59
2/1/90	19158.31
8/1/90	20331.75
2/1/91	21577.07
8/1/91	22898.67
2/1/92	24301.21
8/1/92	25789.66
2/1/93	27369.28
8/1/93	28102.40
2/1/94	17772.16
8/1/94	18860.70
2/1/95	18531.65
8/1/95	19666.72
2/1/96	18307.14
8/1/96	19428.46
2/1/97	18900.83
8/1/97	20058.50
2/1/98	20030.03
8/1/98	21256.87

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\*) On the basis of \$1 million of principal amount

Semiannual Payment DatePrincipal Recovery

2/1/99	21265.54
8/1/99	22568.06
2/1/00	22577.62
8/1/00	23960.50
2/1/01	23970.65
8/1/01	25438.85
2/1/02	25445.95
8/1/02	27136.68
2/1/03	54309.36
8/1/03	57635.80
2/1/04	61166.00
8/1/04	64912.42
2/1/05	68888.36

APPENDIX C

DESCRIPTION OF RAIL CARS AND LESSOR'S COST

GENERAL DESCRIPTION

150 5800 Cubic Foot Covered Hopper Rail Car for Plastics, equipped with 100 ton roller bearings trucks and special Exxon vents.

Car Numbers ECUX 847001 through 847150

Serial Numbers ECUX 847001 through 847150

The Lessor's Cost for each Rail Car is currently assumed to be \$47,005.00

APPENDIX D

PREPAYMENT FEES

<u>DATE</u>	<u>Percentage of Outstanding Amount Payable as Prepayment Fee</u>
8/1/91	8.3816
8/1/92	7.7368
8/1/93	7.0921
8/1/94	6.4474
8/1/95	5.8026
8/1/96	5.1579
8/1/97	4.5132
8/1/98	3.8684
8/1/99	3.2237
8/1/00	2.5789
8/1/01	1.9342
8/1/02	1.2895
8/1/03	0.6447
8/1/04	0.0000